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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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OPTIS WIRELESS TECHNOLOGY,) (CIVIL ACTION NO.
LLC, OPTIS CELLULAR) (2:19-CV-66-JRG
TECHNOLOGY, LLC, PANOPTIS) (
PATENT MANAGEMENT, LLC,) (
UNWIRED PLANET, LLC, UNWIRED) (
PLANET INTERNATIONAL LIMITED,) (
PLAINTIFFS,) (
VS.) (
MARSHALL, TEXAS
AUGUST 3, 2020
3:47 P.M.
APPLE INC.,) (
DEFENDANTS.) (
)

TRANSCRIPT OF JURY TRIAL

AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

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9 Official Court Reporter
United States District Court
10 Eastern District of Texas
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12 (903) 923-7464

13

14 (Proceedings recorded by mechanical stenography, transcript
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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Counsel, to briefly follow up on the discussions we had in chambers regarding disputed demonstratives for opening statements, I raised a question with you about Plaintiffs' Demonstrative 1.13, which had a representation of PX-1612 on it.

And there was a question about whether the language on that section of PX-1612 was actually there or whether it had been added. Did you satisfy yourselves about the original status of PTX-1612?

MR. MUELLER: Your Honor, we haven't had a chance to check, but we'll withdraw the objection to streamline this.

THE COURT: All right. Then that demonstrative is acceptable.

With regard to the three different demonstratives that relate to prior deposition testimony from Ms. Heather Mewes, two of them appear to be the identical slide. One is PDX-1.35, one is PDX-1.23, and those two appear to me to be verbatim the same thing.

And then one is PDX-1.34. PDX-1.34 that refers specifically to June of 2017 is out. PDX-1.23 and 1.35,

03:49:37 1 which does not reference a specific date other than 2018,
03:49:42 2 those are acceptable for opening statement purposes.

03:49:47 3 All right. Before I bring the jury in, counsel,
03:49:54 4 is there anything else before we proceed with my
03:49:56 5 preliminary instructions and your opening statements to the
03:50:00 6 jury that needs to be taken up?

03:50:02 7 MR. MUELLER: No, Your Honor.

03:50:04 8 MR. SHEASBY: Your Honor, they raised an objection
03:50:05 9 to another slide that they hadn't objected to previously
03:50:10 10 that they're now objecting to because it's similar --
03:50:14 11 similar but different than a slide they did object to. In
03:50:18 12 the excess of caution, I would seek permission to show
03:50:21 13 Your Honor so you can -- they just told me they're
03:50:24 14 objecting to it now.

03:50:25 15 MR. MUELLER: This is not --

03:50:26 16 THE COURT: Well, I met with counsel for both
03:50:29 17 parties for at least 40 minutes in chambers. We went over
03:50:34 18 all these disputes. This is something that was not raised
03:50:37 19 then, and you're telling me, Mr. Sheasby, that after
03:50:40 20 counsel returned to the courtroom and before I entered
03:50:44 21 this -- it was a late-breaking dispute that had not
03:50:47 22 otherwise been raised?

03:50:48 23 MR. SHEASBY: Yeah, they're now saying they object
03:50:51 24 to this slide.

03:50:52 25 MR. MUELLER: Your Honor, the truth is Mr. Sheasby

03:50:55 1 showed me the slide after you left the courtroom. It's
03:50:57 2 precisely what Your Honor ruled on with respect -- when you
03:50:57 3 see the slide, you'll understand --

03:50:58 4 THE COURT: Put the slide on the overhead
03:51:01 5 projector, please, Mr. Sheasby.

03:51:03 6 MR. SHEASBY: So this is not a slide they
03:51:05 7 object -- it's Slide 35, Your Honor.

03:51:06 8 THE COURT: Well, I want to see what the objection
03:51:08 9 is.

03:51:09 10 MR. SHEASBY: So this is -- this is not a slide
03:51:14 11 they objected to. Separate patentability is relevant to
03:51:18 12 Doctrine of Equivalents and equivalents. The fact that
03:51:22 13 they couldn't find any different way of doing -- patented
03:51:25 14 any different way of doing it is -- is relevant to the
03:51:27 15 Federal Circuit.

03:51:28 16 They didn't object to it I think because they were
03:51:30 17 successful on the other one which related to the question
03:51:33 18 of whether Apple had any LTE patents. They felt that there
03:51:36 19 may be -- I'm not going to characterize why -- but this is
03:51:40 20 a different issue. This goes to separate patentability
03:51:44 21 which is relevant to equivalents, Your Honor.

03:51:44 22 THE COURT: Mr. Mueller, what's your response?

03:51:45 23 MR. MUELLER: Your Honor, I thought this was
03:51:46 24 exactly what Your Honor had dealt with, that there was no
03:51:49 25 reason for these technical experts to be offering opinions

03:51:51 1 on Apple patents that they hadn't gotten into the reports.

03:51:55 2 I'm surprised to hear that this was not already resolved.

03:51:55 3 MR. SHEASBY: Your Honor, there's no objection to
03:51:56 4 this slide in the papers.

03:51:57 5 THE COURT: This slide is excluded.

03:52:53 6 All right. Let's bring in the jury, please.

03:52:55 7 COURT SECURITY OFFICER: All rise.

03:52:57 8 (Jury in.)

03:54:01 9 THE COURT: Be seated, please.

03:54:02 10 I'm sorry, ladies and gentlemen. If I had known
03:54:49 11 these were still out here, I would have had the clerk's
03:54:52 12 office bring them to you. Take a moment. Be sure to get
03:54:57 13 that protective film off.

03:55:00 14 I want to welcome you back from lunch, ladies and
03:55:31 15 gentlemen. Thank you for being available and prompt.

03:55:34 16 We're going to try to keep this case running, as I
03:55:37 17 indicated earlier, so we can keep to the time schedule I
03:55:42 18 had visited with you about during jury selection.

03:55:44 19 However, I now have some preliminary instructions
03:55:48 20 that I need to give you on the record before we start with
03:55:52 21 opening statements from the lawyers and then get on to the
03:55:54 22 witnesses and their evidence.

03:55:56 23 You've been sworn as the jurors in this case, and
03:55:58 24 as the jury, you are the sole judges of the facts, and as
03:56:03 25 such, you will decide and determine what all the facts are

03:56:07 1 in this case.

03:56:08 2 As the judge, I will give you instructions on the
03:56:10 3 law. I will decide questions of law that arise during the
03:56:13 4 trial. I will handle matters related to evidence and
03:56:16 5 procedure. I am responsible for managing the flow of the
03:56:21 6 trial and maintaining the decorum of the courtroom.

03:56:24 7 At the end of the evidence, I'll give you detailed
03:56:27 8 instructions about the law to apply in deciding this case,
03:56:31 9 and I'll give you a list of questions that you are then to
03:56:34 10 answer.

03:56:35 11 As I told you, this list of questions is called
03:56:37 12 the verdict form. Your answers to those questions will
03:56:42 13 need to be unanimous, and those unanimous answers will
03:56:46 14 constitute the verdict in this case.

03:56:48 15 Now, I want to briefly tell you what this case is
03:56:52 16 about. As you know, it involves a dispute regarding
03:56:57 17 certain United States patents. I know that each of you saw
03:57:00 18 the video this morning produced by the Federal Judicial
03:57:05 19 Center, but I need to give you some instructions now and on
03:57:07 20 the record about a patent and how one is obtained.

03:57:10 21 Patents are granted or denied by the United States
03:57:13 22 Patent and Trademark Office, often referred to, for short,
03:57:16 23 simply as the PTO.

03:57:17 24 A valid United States patent gives the
03:57:21 25 patentholder the right for up to 20 years from the date the

1 patent application is filed to prevent others from making,
2 using, offering to sell, or selling the patented invention
3 within the United States or from importing it into the
4 United States without the patentholder's permission.

5 A patent is a form of property called intellectual
6 property. And like other forms of property, a patent can
7 be bought or sold.

8 A violation of a patentholder's rights is called
9 infringement. A patentholder may try to enforce a patent
10 against persons it believes to be infringers by filing a
11 lawsuit in federal court, and that's what we have in the
12 case before us.

13 The process of obtaining a patent is called patent
14 prosecution. To obtain a patent, one must first file an
15 application with the United States Patent and Trademark
16 Office.

17 The PTO is an agency of the United States
18 Government that employs -- employs trained examiners who
19 review patents or patent applications. The application
20 includes what's called a specification.

21 The specification within a patent application
22 contains a written description of what the claim -- what is
23 the claimed invention telling what it is, how it works, how
24 to make it, and how to use it.

25 The specification concludes, or ends, with one or

03:58:50 1 more numbered sentences. These numbered sentences are
03:58:53 2 called the patent claims.

03:58:55 3 When a patent is granted by the PTO, it's the
03:58:59 4 claims that define the boundaries of its protection and
03:59:03 5 give notice to the public of those boundaries.

03:59:06 6 Patent claims, ladies and gentlemen, may exist in
03:59:08 7 two forms referred to as independent claims and dependent
03:59:12 8 claims.

03:59:14 9 An independent claim does not refer to any other
03:59:17 10 claim in the patent. It is independent. It's not
03:59:21 11 necessary to look at any other claim to determine what an
03:59:25 12 independent claim covers.

03:59:26 13 However, a dependent claim refers to at least one
03:59:31 14 other claim in the patent. A dependent claim includes each
03:59:36 15 of the elements or limitations of that other claim or
03:59:40 16 claims to which it refers or, as we sometimes say, from
03:59:46 17 which it depends, as well as the additional limitations
03:59:50 18 recited within the dependent claim itself.

03:59:51 19 Therefore, to determine what a dependent claim
03:59:55 20 covers, it's necessary to look at both the dependent claim
03:59:58 21 itself and the independent claim or claims from which it
04:00:02 22 refers or from which it depends.

04:00:05 23 The claims of the patents-in-suit use the word
04:00:10 24 comprising. Comprising means including or containing. A
04:00:15 25 claim that includes the word comprising is not limited to

04:00:19 1 the methods or devices having only the elements that are
04:00:23 2 recited in the claim but also covers other methods or
04:00:26 3 devices that add additional elements.

04:00:29 4 Let me give you an example. If you take, for
04:00:32 5 example, a claim that covers a table, the claim recites a
04:00:37 6 table comprising a tabletop, four legs, and glue, that
04:00:42 7 claim will cover any table that contains a tabletop, four
04:00:47 8 legs, and glue, even if it contains other structures such
04:00:51 9 as wheels that go on the end of the legs or leaves that go
04:00:54 10 in the tabletop.

04:00:58 11 Now, that's a simple example using the word
04:01:01 12 comprising and what it means. In other words, ladies and
04:01:04 13 gentlemen, it can have other features in addition to those
04:01:06 14 that are covered by the patent.

04:01:07 15 Now, after an applicant files an application with
04:01:13 16 the PTO, an examiner is assigned by the PTO, and that
04:01:17 17 examiner reviews the application to determine whether or
04:01:19 18 not the claims are patentable, that is to say, appropriate
04:01:23 19 for patent protection, and whether or not the specification
04:01:28 20 adequately describes the invention that's claimed.

04:01:31 21 In examining a patent application, the examiner
04:01:35 22 reviews certain information about the state of the
04:01:38 23 technology at the time the application was filed. The PTO
04:01:43 24 searches for and reviews this type of information that is
04:01:47 25 publicly available or that was submitted by the applicant.

04:01:52 1 This type of information is called prior art.

04:01:54 2 The examiner reviews this prior art to determine
04:01:59 3 whether or not the invention is truly an advance over the
04:02:02 4 state of the art at the time.

04:02:04 5 Prior art is defined by law, and I'll give you at
04:02:09 6 a later time specific instructions as to what constitutes
04:02:12 7 prior art. However, in general, prior art includes
04:02:17 8 information that demonstrates the state of the technology
04:02:20 9 that existed before the claimed invention was made or
04:02:25 10 before the application for a patent was filed.

04:02:28 11 Now, a patent contains a certain list of prior art
04:02:32 12 that the examiner has considered. And the items on this
04:02:37 13 list of prior art, which the examiner has considered, are
04:02:40 14 called the cited references.

04:02:44 15 Now, after the prior art search and an examination
04:02:47 16 of the application, the examiner informs the applicant in
04:02:52 17 writing of what the examiner has found and whether the
04:02:56 18 examiner considers any claim to be patentable, and thus it
04:03:01 19 would be allowed.

04:03:02 20 This writing from the examiner to the applicant is
04:03:06 21 called an Office Action. Now, if the examiner rejects the
04:03:12 22 claims, the applicant has an opportunity to respond to the
04:03:14 23 examiner to try and persuade the examiner to allow the
04:03:18 24 claims.

04:03:19 25 The applicant also has the chance to change or

04:03:22 1 amend the claims or to submit new claims, and the papers
04:03:25 2 generated during these communications back and forth
04:03:28 3 between the applicant and the examiner are called the
04:03:32 4 prosecution history.

04:03:34 5 And this process -- this prosecution history
04:03:37 6 process may go back and forth between the applicant and the
04:03:42 7 examiner for some time until the examiner is ultimately
04:03:44 8 satisfied that the application meets the requirements for a
04:03:48 9 patent. And, in that case, the patent is issued as a
04:03:51 10 United States patent, or in the alternative, if the -- if
04:03:56 11 the examiner ultimately concludes that the application
04:03:58 12 should reject -- should be rejected, then no patent is
04:04:01 13 issued.

04:04:02 14 Sometimes patents are issued after appeals within
04:04:06 15 the Patent and Trademark Office or to a court.

04:04:11 16 The fact, ladies and gentlemen, that the PTO
04:04:13 17 grants a patent does not necessarily mean that the
04:04:16 18 invention claimed in the patent, in fact, deserves the
04:04:19 19 protection of a patent.

04:04:21 20 Now, while an issued United States patent is
04:04:24 21 presumed to be valid under the law, a person accused of
04:04:29 22 infringement has the right to argue in federal court that a
04:04:33 23 claimed invention in a patent is invalid.

04:04:36 24 It's your job, ladies and gentlemen, as the jury,
04:04:39 25 to consider the evidence presented by the parties and to

04:04:43 1 determine independently and for yourselves whether or not
04:04:47 2 the Defendant has proven that a patent is invalid.

04:04:50 3 Now, to help you follow the evidence, I'll give
04:04:54 4 you a brief summary of the positions of the two parties.

04:04:57 5 As you know, the party or parties that bring a
04:05:01 6 lawsuit is called the Plaintiff, or if there's more than
04:05:05 7 one, they're called the Plaintiffs.

04:05:07 8 The Plaintiffs in this case are Optis Wireless
04:05:10 9 Technology, LLC; Optis Cellular Technology, LLC; PanOptis
04:05:15 10 Patent Management, LLC; Unwired Planet, LLC; and Unwired
04:05:24 11 Planet International Limited.

04:05:25 12 Now, all of these Plaintiffs collectively you're
04:05:28 13 going to hear referred to throughout the case simply as
04:05:31 14 either the Plaintiffs or you'll hear them referred to as
04:05:36 15 Optis or you may hear them referred to as PanOptis. If you
04:05:40 16 hear any of those, Optis, PanOptis, or Plaintiffs, it
04:05:44 17 refers to each of these identified companies that stand in
04:05:48 18 the position of being a Plaintiff in this lawsuit.

04:05:50 19 And as you're all aware, the party against whom a
04:05:55 20 lawsuit is filed is called the Defendant. In this case, we
04:05:59 21 have one Defendant, and that is Apple Inc. And you'll hear
04:06:02 22 that Defendant referred to simply as Defendant or as Apple
04:06:07 23 throughout the lawsuit.

04:06:08 24 Now, as I mentioned to you during jury selection
04:06:12 25 earlier today, this is a case of alleged patent

04:06:14 1 infringement. And as I've already mentioned, there are
04:06:18 2 five separate United States patents that have been asserted
04:06:22 3 by the Plaintiffs in this case against the Defendant.

04:06:26 4 The first patent is U.S. Patent No. 8,019,332.
04:06:32 5 And, as you may know, patents are commonly referred to by
04:06:36 6 the last three digits of the patent number. So this
04:06:40 7 particular patent, Patent No. 8,019,332, will be referred
04:06:45 8 to as the '332 patent or the '332 patent.

04:06:50 9 The second U.S. patent at issue in this case is
04:06:54 10 United States Patent No. 8,385,284, referred to as the '284
04:07:01 11 or the '284 patent.

04:07:02 12 The third U.S. patent at issue in this case is
04:07:05 13 United States Patent No. 8,411,557, which you will hear
04:07:12 14 referred to as the '557 patent, or you may hear it called
04:07:15 15 the '557 patent.

04:07:16 16 The fourth U.S. patent at issue in this case is
04:07:20 17 United States Patent No. 8,102,833, which you'll hear
04:07:26 18 called the '833 or the '833 patent.

04:07:28 19 The fifth and final U.S. patent at issue in this
04:07:32 20 case is United States Patent No. 9,001,774, which you'll
04:07:38 21 hear referred to as the '774 or the '774 patent.

04:07:41 22 Now, these five patents, ladies and gentlemen,
04:07:45 23 collectively, you'll hear referred to at various times
04:07:49 24 throughout this trial as the patents-in-suit. You may also
04:07:53 25 hear them referred to collectively as the asserted patents.

04:07:57 1 Both of those things mean the same thing -- that
04:08:01 2 is, the five patents I've just identified for you. And all
04:08:06 3 five of these patents-in-suit, or these asserted patents,
04:08:09 4 generally relate to cell phone technology.

04:08:11 5 Now, the Plaintiffs, Optis, contend that the
04:08:15 6 Defendant, Apple, is willfully infringing certain claims of
04:08:20 7 the patents-in-suit by making, importing, or selling
04:08:25 8 products that include their patented technology.

04:08:27 9 Optis also contends that Apple has induced or
04:08:32 10 contributed to and continues to induce or contribute to
04:08:37 11 infringement by others. And Optis contends that it's
04:08:41 12 entitled to money damages as a result of that infringement.

04:08:44 13 The Defendant, Apple, denies that it is infringing
04:08:47 14 any of the patents-in-suit asserted by the Plaintiffs, and
04:08:51 15 the Defendant contends that the asserted claims of the
04:08:54 16 patents-in-suit are invalid as either being anticipated or
04:09:00 17 obvious in the light of prior art.

04:09:01 18 Apple also contends that the asserted claims of
04:09:06 19 the patents-in-suit are invalid because the -- the patent
04:09:11 20 specifications do not contain a sufficient written
04:09:15 21 description of the invention and do not enable a person
04:09:19 22 skilled in the art to make and use the invention.

04:09:22 23 Finally, Defendant, Apple, contends that even if
04:09:27 24 it does infringe the asserted patents, any damages awarded
04:09:30 25 to the Plaintiffs should be limited because the Plaintiffs

04:09:35 1 failed to provide Apple with notice of the patents-in-suit
04:09:39 2 required under the patent laws of the United States.

04:09:41 3 Now, during the course of the trial, it's likely
04:09:46 4 that you'll hear refer -- you'll hear the patents-in-suit
04:09:49 5 referred to as standard essential patents, or SEPs.

04:09:56 6 Standard essential patents, ladies and gentlemen,
04:09:57 7 are patents that have been declared to be a part of a
04:10:01 8 standard in a certain field. This standard is set and
04:10:05 9 maintained by a global body to ensure that certain
04:10:08 10 processes and devices operate and work in the same way
04:10:14 11 anywhere in the world.

04:10:15 12 For example, it would be counterproductive for
04:10:19 13 your cell phone to work only in the United States such that
04:10:22 14 if you got on a plane and flew to London, England, and got
04:10:28 15 off of the airplane, your cell phone that you use every day
04:10:32 16 at your home in Texas wouldn't work in the United Kingdom
04:10:34 17 or in Europe or in Asia or anywhere else on the planet.

04:10:38 18 To prevent this, standard technologies are created
04:10:41 19 such that tele -- telecommunication devices like your cell
04:10:48 20 phones interwork across different places in the world and
04:10:51 21 different brands of devices. Patents related to such a
04:10:56 22 common and standard technology are recognized as impacting
04:10:58 23 that standard technology and are contributed to and
04:11:03 24 declared by their owner to be essential to that standard.

04:11:07 25 These are called standard essential patents. In

04:11:11 1 this case, the five patents-in-suit, or the asserted
04:11:16 2 patents, have all been declared by their owner to be
04:11:20 3 standard essential patents related to the field of wireless
04:11:25 4 communications.

04:11:25 5 In this case, one of the groups or global bodies
04:11:29 6 that oversees and maintains this standard is called the
04:11:34 7 European Telecommunications Standards Institute or ETSI.
04:11:41 8 And this is simply referred to, for shorthand, ladies and
04:11:44 9 gentlemen, as ETSI, E-T-S-I.

04:11:45 10 Because the asserted patents here are standard
04:11:51 11 essential patents, you will hear about the standard and the
04:11:53 12 contribution of these patents to the standard and the work
04:11:56 13 of ETSI relating to the standard, all as a part of this
04:12:02 14 trial. And I'll give you more detailed instructions on
04:12:04 15 these matters at the end of the trial.

04:12:07 16 Now, ladies and gentlemen, I know that there are
04:12:13 17 lots of new words and new concepts that have been thrown at
04:12:16 18 you since you arrived for jury duty this morning. I'm
04:12:19 19 going to define a lot of these words and concepts for you
04:12:23 20 as we go through these instructions. The attorneys are
04:12:25 21 going to discuss them in their opening statements.

04:12:28 22 And the witnesses are going to help you by going
04:12:30 23 through their testimony to help understand these words and
04:12:34 24 concepts.

04:12:35 25 So, please, do not feel overwhelmed at this stage.

04:12:39 1 It will all come together as we go through the trial, I
04:12:43 2 promise.

04:12:43 3 Now, one of your jobs in this case is to decide
04:12:52 4 whether or not the asserted claims of the five asserted
04:12:59 5 patents have been infringed and whether they are invalid.

04:13:00 6 If you decide that any claim of the
04:13:02 7 patents-in-suit has been infringed by the Defendant and is
04:13:05 8 not invalid, then you'll need to decide whether or not the
04:13:09 9 infringement by the Defendant has been willful.

04:13:11 10 You will also need to decide what amount of money
04:13:15 11 damages should be awarded to the Plaintiffs as compensation
04:13:19 12 for that infringement that you have found.

04:13:21 13 Now, my job in this case is to tell you what the
04:13:26 14 law is, handle the rulings on evidence and procedure, and
04:13:29 15 to oversee the trial effectively and efficiently.

04:13:32 16 In determining the law, ladies and gentlemen, it
04:13:35 17 is specifically my job to determine the meaning of any
04:13:39 18 claim language from within the asserted patents that needs
04:13:43 19 interpretation.

04:13:44 20 I have already determined the meanings of the
04:13:48 21 claims of the patents-in-suit, and you must accept those
04:13:53 22 meanings or constructions that I give you and use those
04:13:56 23 meanings when you decide whether any particular claim has
04:13:59 24 or has not been infringed and whether -- whether you decide
04:14:03 25 any particular claim is or is not invalid.

04:14:06 1 And you'll be given a document in a moment that
04:14:11 2 reflects these meanings that I've already arrived at.

04:14:15 3 For any claim term which I have not provided you
04:14:19 4 with a specific definition, you should apply the plain and
04:14:22 5 ordinary meaning.

04:14:23 6 If, however, I provided you with a specific
04:14:34 7 definition, you are to apply my definition to those terms
04:14:37 8 throughout the case.

04:14:40 9 However, my interpretation of the language of the
04:14:42 10 claims should not be taken by you as an indication that I
04:14:46 11 have a personal opinion or any opinion regarding issues
04:14:50 12 such as infringement and invalidity. Those, ladies and
04:14:54 13 gentlemen, are your issues alone to decide.

04:14:56 14 I'll provide you with more detailed instructions
04:15:00 15 on the meaning of the claims before you retire to
04:15:03 16 deliberate and reach your verdict.

04:15:05 17 In deciding the issues that are before you, you'll
04:15:08 18 be asked to consider specific legal rules, and I'll give
04:15:12 19 you an overview of those rules now. And then at the
04:15:15 20 conclusion of the case, I'll give you much more detailed
04:15:17 21 instructions.

04:15:18 22 The first issue that you're asked to decide is
04:15:22 23 whether the Defendant, Apple, has infringed any of the
04:15:27 24 asserted claims of the patents-in-suit. Infringement is
04:15:31 25 assessed on a claim-by-claim basis. And the Plaintiffs,

04:15:37 1 Optis, must show by a preponderance of the evidence that a
04:15:40 2 claim has been infringed. Therefore, there may be
04:15:46 3 infringement as to one claim but no infringement as to
04:15:49 4 another claim.

04:15:49 5 There are also a few different ways that a patent
04:15:52 6 can be infringed, and I'll explain the requirements for
04:15:57 7 each of these types of infringement to you in detail at the
04:16:01 8 conclusion of the case.

04:16:02 9 But in general, ladies and gentlemen, a Defendant
04:16:04 10 may infringe the asserted patent by making, using, or
04:16:09 11 selling or offering for sale in the United States or
04:16:11 12 importing into the United States a product meeting all the
04:16:16 13 elements or requirements of a claim of the asserted patent.

04:16:20 14 And I'll provide you with more detailed
04:16:23 15 instructions on the requirements for infringement at the
04:16:25 16 conclusion of the case.

04:16:26 17 Now, the second issue that you will be asked to
04:16:29 18 decide is whether any of the asserted patents are invalid.

04:16:35 19 Invalidity is a defense to infringement.
04:16:42 20 Therefore, even though the United States Patent and
04:16:43 21 Trademark Office, or PTO, has allowed the asserted claims
04:16:46 22 and even though a United States patent as issued by the PTO
04:16:50 23 is presumed to be valid, you, the jury, must decide whether
04:16:55 24 those claims are invalid after hearing the evidence
04:16:59 25 presented during the trial of this case.

04:17:01 1 You may find a patent claim to be invalid for a
04:17:06 2 number of reasons, including because it claims subject
04:17:08 3 matter that is not new, not patent eligible, or is obvious.

04:17:15 4 Patents must claim certain patent eligible subject
04:17:20 5 matter. In general, a patent is directed towards eligible
04:17:25 6 subject matter if it claims a process, a machine,
04:17:28 7 manufacturer, or composition of a matter, or any new or
04:17:32 8 useful improvement thereof.

04:17:34 9 However, if the Court determines that a patent is
04:17:36 10 also directed toward an abstract idea, then the jury must
04:17:40 11 determine whether the patent covers only the activities
04:17:44 12 that are well-understood, routine, and conventional at the
04:17:48 13 time the patent was filed.

04:17:49 14 I'll provide you with more detailed instructions
04:17:52 15 on this question at the conclusion of the trial.

04:17:54 16 For a patent claim to be invalid because it is not
04:17:58 17 new, the Defendants must show -- or the Defendant, I'm
04:18:03 18 sorry, must show by clear and convincing evidence that all
04:18:06 19 of the elements of a claim are sufficiently described in a
04:18:10 20 single previous printed publication or patent, and we call
04:18:15 21 these items prior art.

04:18:16 22 If a claim is not new, ladies and gentlemen, it is
04:18:21 23 said to be anticipated by the prior art.

04:18:23 24 Another way that a claim can be found to be
04:18:26 25 invalid is that it may have been obvious. Even though a

04:18:31 1 claim is not anticipated because every element of a claim
04:18:34 2 is not shown or sufficiently described in a single piece of
04:18:38 3 prior art, the claim may still be invalid if it would have
04:18:43 4 been obvious to a person of ordinary skill in the field of
04:18:47 5 technology of the patent at the relevant time.

04:18:50 6 Now, you'll need to consider a number of questions
04:18:54 7 when deciding whether the inventions claimed in the
04:18:57 8 asserted patents are obvious, and I'll provide you with
04:19:00 9 more detailed instructions on these questions at the
04:19:03 10 conclusion of the trial.

04:19:04 11 Another way that a claim can be found to be
04:19:08 12 invalid is that there may have been a lack of an adequate
04:19:13 13 written description. A patent may be invalid if its
04:19:18 14 specification does not describe the claimed invention in
04:19:22 15 sufficient detail so that one skilled in the art can
04:19:26 16 reasonably conclude that the inventor actually had
04:19:29 17 possession of the invention they're claiming.

04:19:31 18 If you decide that any claim of the
04:19:34 19 patents-in-suit has been infringed and is not invalid, then
04:19:39 20 you'll need to decide whether Defendant's infringement has
04:19:43 21 been willful.

04:19:45 22 You'll also need to decide what amount of money
04:19:48 23 damages should be awarded to the Plaintiffs, Optis or
04:19:52 24 PanOptis -- either one refers to the Plaintiffs -- to
04:19:54 25 compensate it for such infringement.

04:19:57 1 A damage award must be adequate to compensate the
04:20:01 2 patentholder for the infringement. And in no event, ladies
04:20:05 3 and gentlemen, may a damage award be less than what the
04:20:08 4 patentholder would have received had it been paid a
04:20:12 5 reasonable royalty for the use of its patent.

04:20:14 6 However, the damages you award, if any, are meant
04:20:19 7 to compensate the patentholder, and they are not meant to
04:20:22 8 punish the Defendant. And you may not include in any
04:20:27 9 damages award an additional amount as a fine or a penalty
04:20:30 10 above what is necessary to fully compensate the
04:20:34 11 patentholder for the infringement.

04:20:35 12 Additionally, damages cannot be speculative, and
04:20:41 13 the Plaintiffs must prove the amount of their damages for
04:20:44 14 the alleged infringement by a preponderance of the
04:20:46 15 evidence.

04:20:49 16 Now, under the patent laws, Optis may recover only
04:20:53 17 damages for infringement that occurred after the date that
04:20:56 18 Optis gave notice to Apple that Optis believed Apple was
04:21:01 19 infringing the patents-in-suit. And it will be up to you
04:21:05 20 to determine when such notice occurred, and I'll give you
04:21:08 21 more detailed instructions on the calculation of damages
04:21:11 22 for the Defendant's alleged infringement of the
04:21:14 23 patents-in-suit at the conclusion of the trial, including
04:21:18 24 by giving you specific instructions with regard to the
04:21:20 25 calculation of a reasonable royalty.

04:21:22 1 However, please be aware that the fact I'm
04:21:28 2 instructing you on damages does not mean that Optis is or
04:21:31 3 is not entitled to recover damages.

04:21:36 4 Now, throughout the trial, ladies and gentlemen,
04:21:38 5 you're going to be hearing from a number of different
04:21:41 6 witnesses in this case, and I want you to keep an open mind
04:21:46 7 while you're listening to the evidence and not decide any
04:21:48 8 of the facts until you've heard all of the evidence.

04:21:53 9 And this is important, while the witnesses are
04:21:55 10 testifying, remember, ladies and gentlemen, that you will
04:21:58 11 have to decide the degree of credibility and believability
04:22:04 12 to allocate to the witness and to the evidence.

04:22:06 13 So while the witnesses are testifying, you should
04:22:09 14 be asking yourselves things like this: Does the witness
04:22:14 15 impress you as being truthful? Does he or she have a
04:22:16 16 reason not to tell the truth? Does he or she have any
04:22:20 17 personal interest in the outcome of the case? Does the
04:22:23 18 witness seem to have a good memory? Did he or she have the
04:22:27 19 opportunity and ability to observe accurately the things
04:22:30 20 that they testified about? Did the witness appear to
04:22:34 21 understand the questions clearly and answer them directly?
04:22:39 22 And, of course, does the witness's testimony differ from
04:22:42 23 the testimony of any other witnesses? And if it does, how
04:22:46 24 does it differ?

04:22:47 25 These are some of the kinds of things that you

04:22:51 1 should be thinking about while you're listening to each and
04:22:54 2 every witness in this trial.

04:22:55 3 I also want to talk to you briefly, ladies and
04:22:58 4 gentlemen, about expert witnesses.

04:22:59 5 When knowledge of a technical subject may be
04:23:03 6 helpful to you, the jury, a person who has special training
04:23:07 7 and experience in that particular field, we call them an
04:23:10 8 expert witness, is permitted to testify to you about his or
04:23:17 9 her opinions on those technical matters.

04:23:21 10 However, you're not required to accept an expert
04:23:24 11 opinion or any -- an expert witness or any other witness's
04:23:28 12 opinions at all. It's up to you to decide whether an
04:23:32 13 expert witness is correct or incorrect or whether or not
04:23:36 14 you want to believe what they say.

04:23:38 15 It's also up to you to believe -- to determine
04:23:41 16 whether or not any other witness in the case is correct or
04:23:45 17 incorrect or whether you want to believe what they have to
04:23:48 18 say. Those kinds of decisions, judging the credibility and
04:23:53 19 believability of every -- each and every witness in the
04:23:56 20 case, are particularly within your area of responsibility
04:23:59 21 as the jury.

04:24:00 22 Now, I anticipate that there will be expert
04:24:07 23 witnesses testifying in support of each side in this case,
04:24:10 24 but it will be up to you to listen to their qualifications,
04:24:14 25 and when they give an opinion and explain the basis for

04:24:16 1 that opinion, you'll have to evaluate what they say,
04:24:18 2 whether you believe it, and to what degree, if any, that
04:24:22 3 you want to give it weight.

04:24:24 4 Remember, judging and evaluating the credibility
04:24:27 5 and believability of each and every witness is an important
04:24:31 6 part of your job as jurors.

04:24:33 7 Now, during the course of the trial, ladies and
04:24:36 8 gentlemen, it's possible that there will be testimony from
04:24:39 9 one or more witnesses that are going to be presented to you
04:24:42 10 through what we call a deposition.

04:24:44 11 In trials such as this, it's tough to get every
04:24:48 12 witness here in person at the same time. So the lawyers
04:24:51 13 for each of the parties prior to the trial take the
04:24:55 14 depositions of the witnesses.

04:24:57 15 In the deposition, a court reporter is -- is
04:25:01 16 present, the witness is present and sworn and placed under
04:25:04 17 oath, just as if he or she were in open court, and the
04:25:08 18 lawyers for the parties ask those witnesses questions, and
04:25:13 19 those questions and the answers are recorded and taken
04:25:16 20 down.

04:25:16 21 And portions of these recordings, often made as
04:25:20 22 video recordings, of those questions and answers may be
04:25:24 23 played back to you, the jury, as a part of this trial so
04:25:27 24 you can see that witness and hear that testimony even
04:25:30 25 though they're not physically present in the courtroom.

04:25:33 1 That deposition testimony is entitled to the same
04:25:38 2 consideration, insofar as possible, and is to be judged as
04:25:42 3 to the credibility, weight, and otherwise considered by
04:25:46 4 you, the jury, in the same way as if the witness had been
04:25:50 5 present and given that testimony in person from the witness
04:25:53 6 stand in open court.

04:25:54 7 Now, during the trial of the case, ladies and
04:25:59 8 gentlemen, it's possible that the lawyers will make
04:26:01 9 objections. And if they do, I will give rulings on those
04:26:05 10 objections.

04:26:06 11 It's the duty of an attorney for each side of the
04:26:08 12 case to object when the other side offers testimony or
04:26:15 13 other evidence that the attorney believes is not proper
04:26:19 14 under the orders of the Court or the Rules of Evidence or
04:26:22 15 procedure.

04:26:23 16 Now, upon allowing the testimony or other evidence
04:26:25 17 to be introduced over the objection of an attorney, the
04:26:27 18 Court does not, unless expressly stated, indicate an
04:26:30 19 opinion as to the weight or effect of such evidence. As
04:26:37 20 I've said before, you, the jury, are the sole judges of the
04:26:42 21 credibility and believability of all the witnesses and the
04:26:45 22 weight and what effect to give to all the evidence.

04:26:46 23 Now, I'd like to compliment the parties in this
04:26:49 24 case, both Plaintiffs and Defendant, because up until
04:26:52 25 today, ladies and gentlemen, they have worked very

04:26:54 1 diligently with the Court to go through all the exhibits
04:26:58 2 that may be shown to you over the course of the trial, and
04:27:01 3 the Court through these pre-trial procedures has already
04:27:04 4 considered the arguments from the parties as to the
04:27:07 5 admissibility of these exhibits, and the Court has ruled on
04:27:13 6 the admissibility of these exhibits. And I promise you,
04:27:15 7 that has saved you a lot of time now that you are in the
04:27:18 8 jury box as jurors to hear the evidence.

04:27:20 9 There were hundreds and hundreds of exhibits
04:27:23 10 presented, and I have considered and ruled on every one of
04:27:27 11 them, and those have been reduced to a known list of
04:27:32 12 pre-admitted exhibits where the Court has already passed on
04:27:36 13 the admissibility.

04:27:37 14 That means those exhibits can be shown to you over
04:27:40 15 the course of the trial without having to go through a
04:27:43 16 presentation of the basis on which they're admissible, an
04:27:46 17 objection from the other party, and arguments to the Court
04:27:50 18 about which side is right and whether the document is or
04:27:53 19 isn't admissible under the Rules of Evidence and then
04:27:56 20 ultimately the Court reach a conclusion and a ruling.

04:27:59 21 All of that has been done on each of these
04:28:00 22 exhibits before today. So you don't have to sit there and
04:28:03 23 listen to that process. And I promise you, it has saved a
04:28:06 24 lot of time going forward as to how we would have to handle
04:28:10 25 it otherwise. And both sides have worked diligently with

04:28:13 1 the Court to accomplish that process, and both sides are to
04:28:18 2 be complimented for their efforts in that regard.

04:28:21 3 So -- so you should understand through these
04:28:24 4 pre-trial procedures, all the rulings have already been
04:28:27 5 made by the Court about the admissibility of all the
04:28:29 6 exhibits, and this has saved a lot of time.

04:28:34 7 This also means that when the parties show you an
04:28:36 8 exhibit over the course of the trial, if they show it to
04:28:39 9 you, it means I have already ruled on the admissibility of
04:28:41 10 that exhibit. If I had ruled it wasn't admissible, you
04:28:45 11 would not see it, and it would not be shown to you.

04:28:49 12 And when they offer it, they have the ability to
04:28:51 13 ask questions about it and put it in the proper context for
04:28:54 14 you.

04:28:54 15 I just want you to know, both sides have worked
04:28:57 16 hard with the Court to streamline this process, and this is
04:29:00 17 going to save us a lot of time over the course of the
04:29:03 18 trial.

04:29:03 19 However, it's still possible that objections will
04:29:07 20 arise during the trial. If I should sustain an objection
04:29:12 21 to a question addressed to a witness, then you must
04:29:16 22 disregard the question entirely, and you may draw no
04:29:20 23 inference from its wording or speculate about what the
04:29:22 24 witness would have said if I had allowed them to answer the
04:29:25 25 question.

04:29:26 1 On the other hand, if I overrule an objection
04:29:30 2 addressed to a question to a witness, then you should
04:29:34 3 consider the question and the witness's answer just as if
04:29:38 4 no objection had ever been made.

04:29:39 5 Now, you should know, ladies and gentlemen, that
04:29:42 6 the law of the United States permits a United States
04:29:46 7 District Judge to comment to the jury regarding the
04:29:49 8 evidence in a case, but those comments from the judge may
04:29:53 9 be disregarded by the jury in their entirety because
04:29:57 10 I've -- as I've told you, it's the jury that is the sole
04:30:00 11 judges of the facts in the case, the credibility of the
04:30:03 12 witnesses, and the amount of weight you want to give to
04:30:05 13 each witness's testimony.

04:30:06 14 And even though the law may permit me to make
04:30:12 15 comments to you about the evidence in this case, as I
04:30:14 16 indicated during jury selection earlier today, it's my
04:30:17 17 intention to try very hard not to comment on any of the
04:30:21 18 evidence or the witnesses throughout the trial because I
04:30:25 19 believe strongly that that is your responsibility, and even
04:30:29 20 though I have the right to comment on them, I'm going to
04:30:32 21 work hard not to.

04:30:33 22 Now, you should also know that the court reporter
04:30:36 23 in front of me, Ms. Holmes, is taking down every word that
04:30:40 24 is said in the courtroom throughout the trial, but the
04:30:43 25 written transcript of all of that is not going to be

04:30:46 1 available to you for you to consider during your
04:30:48 2 deliberations. That transcript is prepared in case there's
04:30:53 3 an appeal of this case to an appellate court.

04:30:56 4 So that means you're going to have to rely on your
04:31:00 5 memories of the evidence that's developed over the course
04:31:03 6 of the trial.

04:31:03 7 In a moment, each of you are going to be given a
04:31:07 8 juror notebook, and in the back of that notebook, you're
04:31:09 9 going to find a legal pad that you can use to take notes on
04:31:13 10 if you choose -- if you choose to throughout the course of
04:31:16 11 the trial.

04:31:17 12 It will be up to each of you to decide whether or
04:31:20 13 not you want to take notes about the witnesses or anything
04:31:23 14 else regarding the trial and how detailed you want those
04:31:26 15 notes to be if you decide to take notes.

04:31:28 16 But, remember, those notes are for your own
04:31:32 17 personal use. You still have to rely on your memory of the
04:31:36 18 evidence, which is why you should be paying close attention
04:31:39 19 to the testimony of each and every witness.

04:31:41 20 You should not abandon your own recollection
04:31:46 21 because somebody else's notes indicate something different.
04:31:49 22 Your notes, if you keep them, are to refresh your
04:31:53 23 recollection only, and that's the only reason you should be
04:31:55 24 keeping them.

04:31:56 25 I'm now going to ask our Court Security Officer to

04:31:59 1 pass out these juror notebooks to each of the members of
04:32:02 2 the jury.

04:32:40 3 In these notebooks, ladies and gentlemen, you'll
04:32:43 4 see that you have a copy of each of the five asserted
04:32:46 5 patents that are at issue in this case and that we've
04:32:49 6 talked about.

04:32:49 7 You'll also find in there that you have witness
04:32:52 8 pages for each witness that might testify in the case with
04:32:56 9 a picture of the witness at the top of the page, and the
04:32:59 10 remainder of the page available for note-taking there if
04:33:03 11 you choose to take notes.

04:33:04 12 You'll also see that you have a chart in there
04:33:07 13 identifying the language from the asserted claims where the
04:33:10 14 Court has already construed that language and given you a
04:33:14 15 construction or definition to apply when answering the
04:33:18 16 questions in the verdict form.

04:33:20 17 And, as I've mentioned, in the back, you'll find a
04:33:24 18 legal pad for note-taking. And in the front pocket, you
04:33:28 19 should find both a highlighter and a pen that you can use
04:33:31 20 for those purposes, as well.

04:33:33 21 Each of these notebooks are just the same. I
04:33:36 22 would suggest that in the front cover, you write your name
04:33:40 23 so you make sure that you keep yours, and don't get it
04:33:43 24 confused with anybody else's, and they don't need to be
04:33:47 25 passed around by you. You each need to keep your own

04:33:51 1 notebook in your own possession.

04:33:52 2 And, ladies and gentlemen, in that regard, you
04:33:55 3 should either have that notebook with you in the jury box,
04:33:58 4 just like you do now, or you should have it in the jury
04:34:01 5 room with you. These are not to be left laying around
04:34:04 6 where someone else can pick them up. Either have them with
04:34:07 7 you in the jury box, or if you've left for the evening,
04:34:11 8 leave them on the table in the jury room. You can find
04:34:13 9 your notebook the next morning and have it with you when
04:34:16 10 you come back into the courtroom.

04:34:18 11 Now, having said that, there may be times over the
04:34:21 12 course of the trial where we take a recess or a quick
04:34:24 13 break, and it may be a short recess. And if it is, I may
04:34:28 14 say, ladies and gentlemen, you can simply close and leave
04:34:31 15 your notebooks in your chair in the jury box. That means
04:34:35 16 you're not going to be gone very long, and it's fine to
04:34:37 17 leave it there rather than carry it back and forth to the
04:34:40 18 jury room with you.

04:34:42 19 But unless I give you those kind of specific
04:34:44 20 instructions, it should be in your possession whenever
04:34:49 21 you're here in court. And when you go home in the evening,
04:34:53 22 it should be in the jury room on the table where you can
04:34:55 23 find it the next morning.

04:34:56 24 Now, in a moment, we're going to hear opening
04:34:59 25 statements from the lawyers. These opening statements are

04:35:03 1 designed to give you a roadmap of what each side expects
04:35:07 2 that the evidence will show in this case.

04:35:11 3 And you should remember throughout the trial,
04:35:13 4 ladies and gentlemen, that what the lawyers tell you is not
04:35:16 5 evidence. I want to say that again. What the lawyers tell
04:35:20 6 you is not evidence.

04:35:23 7 The evidence is the sworn testimony that will be
04:35:26 8 presented from the witness stand under oath and subject to
04:35:30 9 cross-examination, whether it's through a live witness or
04:35:35 10 through a deposition witness, as I've already described to
04:35:39 11 you. And the evidence will include those exhibits which
04:35:42 12 I've already considered and found are admissible under the
04:35:45 13 Rules of Evidence and are an admitted exhibit in this case.

04:35:48 14 That is the totality of the evidence in this case.
04:35:54 15 Again, what the lawyers tell you is not evidence. What
04:35:59 16 they tell you, in fact, is their impression of what the
04:36:02 17 evidence should be. And they have a duty to point out to
04:36:07 18 you where they believe the evidence is. But, remember,
04:36:10 19 what they tell you is not evidence.

04:36:12 20 Now, after the opening statements are given by
04:36:15 21 each side, the Plaintiffs will have the opportunity to call
04:36:19 22 their witnesses and put on their evidence. This is called
04:36:23 23 the Plaintiffs' case-in-chief.

04:36:25 24 When the Plaintiff has finished putting on its
04:36:28 25 witnesses and evidence, it will rest its case-in-chief, and

04:36:31 1 then the Defendant has the opportunity to call its
04:36:34 2 witnesses and put on its evidence. And that's called the
04:36:38 3 Defendant's case-in-chief.

04:36:39 4 After the Defendant rests its case-in-chief, then
04:36:44 5 the Plaintiff has the opportunity, if it chooses, to call
04:36:48 6 what are called rebuttal witnesses to address the evidence
04:36:51 7 that the Defendants have put on.

04:36:53 8 After the Plaintiffs put on any rebuttal
04:36:57 9 witnesses, if they choose to, then you will have heard all
04:37:01 10 the evidence in this case. And when you have heard all the
04:37:05 11 evidence in this case, at that point, I will give you
04:37:09 12 written instructions on the law that we've talked about and
04:37:13 13 that you are to apply to the evidence that you've heard,
04:37:17 14 and you'll have your own written copy -- your own
04:37:20 15 individualized printed copy of those written instructions
04:37:23 16 on the law that I'm going to give -- give you. And you may
04:37:26 17 take that copy from me with you back to the jury room when
04:37:29 18 you retire to deliberate.

04:37:30 19 These instructions that I'll give you at that
04:37:36 20 point in written form, and I'll give them to you orally, as
04:37:40 21 well, those are called the Court's final instructions to
04:37:44 22 the jury. And it's also sometimes called by people the
04:37:46 23 Court's charge to the jury.

04:37:48 24 Now, after these instructions are given by me to
04:37:51 25 you, the lawyers will present their closing arguments,

04:37:57 1 which are designed to point out what they believe they've
04:38:00 2 proved over the course of the trial and through the
04:38:02 3 evidence that's come in during the trial.

04:38:04 4 And then once you've heard the lawyers' closing
04:38:08 5 arguments, you'll retire to the jury room to consider the
04:38:11 6 questions in the verdict form and reach a unanimous
04:38:13 7 decision as to those questions. And those unanimous
04:38:15 8 answers to those questions, as I've told you, will
04:38:20 9 constitute your verdict in this case.

04:38:24 10 Let me repeat my earlier instruction to you. You
04:38:28 11 are not to discuss this case among yourselves or with
04:38:30 12 anyone else during the trial. And when I said not discuss
04:38:33 13 the case, I mean not communicate about it in any way. And
04:38:40 14 that applies to anybody outside this courtroom.

04:38:43 15 And until you've heard all the evidence in this
04:38:44 16 case, ladies and gentlemen, it applies to the eight of you
04:38:47 17 with each other.

04:38:48 18 During the course of the trial, at lunch breaks
04:38:50 19 and recesses, you are not to discuss the evidence among
04:38:55 20 yourselves. Only when you've heard all the evidence and
04:38:59 21 only when I instruct you to retire to the jury room and
04:39:01 22 deliberate on your verdict after I've given you my final
04:39:05 23 instructions and you've heard closing arguments from the
04:39:08 24 attorneys, then is the first time that you're supposed to
04:39:12 25 discuss the evidence among yourselves.

04:39:14 1 And when you've heard all the evidence and when
04:39:17 2 you retire at my instruction to the jury room to deliberate
04:39:20 3 on the verdict, it becomes your duty to discuss the
04:39:24 4 evidence that's presented over the course of the trial in
04:39:27 5 your effort to reach a unanimous decision as to the
04:39:30 6 questions that are presented in the verdict form.

04:39:31 7 I also want to remind you that over the course of
04:39:37 8 the trial, these lawyers and their staff and the witnesses
04:39:41 9 and the representatives of the competing companies that are
04:39:44 10 the parties are not going to talk to you if they see you in
04:39:48 11 close proximity.

04:39:50 12 If you run into one of them on the front steps
04:39:52 13 coming into the courthouse one morning and they're not
04:39:55 14 friendly and they don't speak, don't consider them to be
04:39:58 15 rude or unfriendly. Don't hold it against them. They're
04:40:01 16 simply doing what I've instructed them to do.

04:40:03 17 All right. With these instructions, we're now
04:40:07 18 going to proceed to hear opening statements from the
04:40:09 19 parties.

04:40:10 20 We'll begin with the Plaintiffs' opening
04:40:13 21 statement. The Plaintiff may address the jury with its
04:40:16 22 opening statement at this time.

04:40:18 23 Would you like a warning on your time,
04:40:20 24 Mr. Sheasby?

04:40:21 25 MR. SHEASBY: Yes, Your Honor, 15 minutes, and

04:40:23 1 three minutes.

04:40:24 2 THE COURT: 15 minutes remaining and three minutes
04:40:26 3 remaining. You may proceed, sir.

04:40:29 4 MR. SHEASBY: May it please the Court.

04:40:31 5 Good late afternoon, ladies and gentlemen of the
04:40:32 6 jury. I want to introduce myself. My name is Jason
04:40:36 7 Sheasby. I've been asked to speak on behalf of the brother
04:40:41 8 and sister companies that make up PanOptis.

04:40:44 9 I'm married. My wife and I have two daughters,
04:40:46 10 and we also raise a niece and nephew. I was born in
04:40:51 11 California, and I've spent my whole life in California.

04:40:53 12 I want to begin by thanking you for your service
04:40:56 13 today. I know it's an extraordinary sacrifice during
04:41:02 14 extraordinary times. And Judge Gilstrap referred to it
04:41:05 15 as -- as -- as the right to a trial by jury.

04:41:07 16 And that's something that's interesting to me, and
04:41:10 17 the reason why it's interesting to me is that when I was
04:41:13 18 growing up, I always heard it referred to as jury duty.
04:41:16 19 It's your duty to go to -- to be a juror. And that's true.
04:41:20 20 It's part of your duty as a citizen. But it's also a
04:41:23 21 right, a right to a trial by jury.

04:41:25 22 Now, when you think about that, you may think of
04:41:28 23 it as the right to PanOptis or Apple to have a jury.
04:41:33 24 That's actually not what the founders meant. What the
04:41:35 25 founders meant when they said there's a right to a jury

04:41:38 1 trial is that they meant that the citizens of our country
04:41:42 2 get to decide incredibly important disputes. The citizens
04:41:46 3 of our country are in control. That's what the founders
04:41:50 4 meant when they said right to a trial by jury.

04:41:53 5 It's your right to decide, and this is an
04:41:56 6 incredibly important trial and incredibly important
04:42:00 7 question that you have to answer. The power is yours.

04:42:03 8 PanOptis owns a group of essential patents that
04:42:07 9 are necessary for cellular communications, and those
04:42:12 10 patents were created by LG, Panasonic, and Samsung, which
04:42:16 11 really built, along with a couple of other companies, the
04:42:21 12 worldwide telecommunications network as we know it. And
04:42:24 13 it's an interesting story.

04:42:26 14 So you may have heard of 2G, you may have heard of
04:42:29 15 3G, and this case is about 4G or LTE.

04:42:32 16 And what happened was in the mid-2000s, a group of
04:42:36 17 companies, including Panasonic, LG, and Samsung, realized
04:42:40 18 something. They realized that there was going to be a
04:42:42 19 smartphone revolution. And with that revolution, there was
04:42:44 20 going to be masses and masses of data, oceans of data that
04:42:50 21 would be traveling over the networks. And something had to
04:42:53 22 be done about that.

04:42:53 23 And so a group of far-seeing companies got
04:42:57 24 together and formed an industry group. That industry group
04:43:01 25 contributed ideas, contributed inventions, and created the

04:43:06 1 4G/LTE network.

04:43:07 2 Apple is infringing patents that have been awarded
04:43:11 3 to LG, Panasonic, and Samsung based on that labor.

04:43:16 4 LG and Panasonic concluded that they wanted one
04:43:23 5 company to efficiently license and protect their
04:43:27 6 intellectual property. They wanted one company to ask the
04:43:30 7 phone manufacturers, who didn't meaningfully contribute to
04:43:34 8 the standard, didn't meaningfully contribute to LTE when it
04:43:38 9 was created, but are benefitting from it and using it and
04:43:41 10 making extraordinary profits based on it, to take
04:43:44 11 responsibility.

04:43:45 12 That's the purpose of PanOptis. And that's
04:43:47 13 actually the fundamental dispute in this case. It's about
04:43:50 14 responsibility. Apple needs to take responsibility for the
04:43:54 15 use of its technology.

04:43:55 16 Just like the right to a trial by jury is in the
04:44:05 17 Constitution, the rights to patents are in the
04:44:10 18 Constitution. Our founders at the creation of our country
04:44:13 19 realized that it was absolutely incredibly important to
04:44:16 20 protect inventions, to treat it as a property right. No
04:44:20 21 different than your homestead, no different than a piece of
04:44:23 22 land. It's a sacred property right.

04:44:32 23 Next slide, please. The other way.

04:44:35 24 PanOptis is created using the inventions of a
04:44:42 25 number of companies, including LG --

04:44:44 1 Next slide, please.

04:44:45 2 -- Panasonic, Samsung, and Ericsson. They
04:44:52 3 combined together to create LTE.

04:44:54 4 This is the history of wireless technology. You
04:45:01 5 see 1G, you see 2G, you see 3G, you see 4G, and then
04:45:07 6 suddenly at the time 4G was introduced, you see this
04:45:09 7 explosion of data.

04:45:10 8 Now, there's an interesting story here. So we
04:45:13 9 think of Apple as a company that makes phones. But in
04:45:19 10 2007, for example, when Apple launched its first phone, it
04:45:21 11 was a computer company.

04:45:23 12 In 2007, when Apple launched its first phone, it
04:45:27 13 launched it as 2G. So the exact time that Samsung,
04:45:32 14 Panasonic, and LG were creating this incredible 4G
04:45:37 15 technology, Apple was stuck at 2G.

04:45:40 16 Now, we think of Apple as an innovative company.
04:45:43 17 We think of it as making beautiful products. We think of
04:45:46 18 it as making nice products. And there are areas in which
04:45:51 19 it does innovate.

04:45:52 20 But one area where it chose not to innovate at
04:45:55 21 that time period was with LTE. It made a business decision
04:45:58 22 not to invest in LTE.

04:45:59 23 There are profound consequences to that business
04:46:05 24 decision. Those consequences will be decided in this
04:46:08 25 court.

04:46:09 1 Judge Gilstrap spoke about standards and spoke
04:46:13 2 about 4G/LTE as relating to a standard. And an easy way to
04:46:18 3 think about a standard is wall plugs. Anyone can make a
04:46:23 4 wall plug, but the design of the wall plug is the same for
04:46:26 5 each manufacturer so that each of them can plug into a
04:46:29 6 wall. That's a standard.

04:46:31 7 It's the same way with 4G/LTE. 4G/LTE is a group
04:46:36 8 of manufacturers that got together, members filed patents
04:46:40 9 on their designs, the industry votes to adopt the designs,
04:46:44 10 and then they publish technical specifications, the
04:46:47 11 instructions that are used to implement the standards.

04:46:51 12 And those pictures on the screen, those are
04:46:54 13 actually meetings from the LTE standard. And do you see
04:46:59 14 whose logo is at the bottom there? It's Samsung. They
04:47:03 15 participated. They crafted. They created this standard.

04:47:05 16 This is an actual example of what a standard looks
04:47:09 17 like. It's a detailed technical discussion of requirements
04:47:10 18 that a phone must have, because, of course, there must be a
04:47:14 19 standard design. That's why a Samsung phone can talk to an
04:47:17 20 Apple phone, and an Apple phone can talk to an LG phone.

04:47:20 21 There are five patents-at-issue in this case. And
04:47:23 22 those are the five. They're referred to by the last three
04:47:28 23 digits. So, for example, we refer to one as the '284, the
04:47:33 24 '774, and those are the companies -- LG, Panasonic, and
04:47:38 25 Samsung -- who created them.

04:47:39 1 Now, the evidence will show, I believe, that these
04:47:42 2 patents have a significant impact on performance. External
04:47:45 3 independent experts were hired by Panasonic to analyze
04:47:49 4 performance, and they determined that these five patents
04:47:51 5 result in a 24 percent increase in performance to Apple.
04:47:57 6 24 percent.

04:47:57 7 Here is some key dates. You'll see that the
04:48:04 8 patents-at-issue in this case were all filed between 2005
04:48:08 9 and 2008. The last one was in 3 of 2008. To put that in
04:48:13 10 context of how far seeing these companies were, Apple did
04:48:18 11 not launch its first phone, a 2G phone, until the end of
04:48:22 12 2007.

04:48:23 13 The companies were very open about the fact that
04:48:28 14 they believed they may be standard essential. They
04:48:29 15 declared them to the industry. And Samsung and LG launched
04:48:35 16 their mobile phones in 2010 and 2011.

04:48:38 17 Many members of the industry have recognized the
04:48:43 18 importance of PanOptis's patents. HTC, ZTE, Kyocera,
04:48:48 19 BlackBerry, even Huawei has all agreed to take a license
04:48:54 20 and to pay money because they use the LTE standard and
04:49:00 21 PanOptis's patents are essential to the standard. That's a
04:49:03 22 fact. That's not an argument. That's a fact that will be
04:49:06 23 in the record.

04:49:07 24 Now, what's interesting about discover -- about
04:49:11 25 the discovery process is we are allowed to, based on the

04:49:17 1 Court's permission, look at the internal records of Apple.
04:49:20 2 We actually can access documents that are confidential to
04:49:23 3 Apple.

04:49:24 4 And, in fact, counsel for Apple said this really
04:49:29 5 important phrase, which is to say we can look under the
04:49:32 6 hood. We can. We can look in the documents, and we can
04:49:35 7 look at what Apple says behind closed doors, which is
04:49:40 8 different from what they say publicly.

04:49:42 9 And you'll see there's an orange or yellow block
04:49:45 10 at the bottom of that page. That's called an exhibit
04:49:47 11 number. An exhibit number, you can write down. And if you
04:49:51 12 think it's important in deliberations, you can ask for it.

04:49:55 13 And so this is PX-1612. This is a document
04:49:58 14 prepared by Apple's lawyers, and it shows that they were
04:50:01 15 significantly behind Samsung, Panasonic, and LG in
04:50:08 16 innovation. And that blow-up at the right, that's not my
04:50:12 17 words, that's their own internal analysis. Apple continues
04:50:16 18 to hold fewer patents than competitors and suppliers.

04:50:20 19 So Apple in its advertisements describes itself as
04:50:24 20 an innovator, but internally it recognizes that it had
04:50:26 21 fallen far behind Samsung, Panasonic, and LG.

04:50:29 22 In fact, Apple did not launch its LTE phone until
04:50:36 23 September 2012. That was over two years after Samsung.
04:50:40 24 So, in addition to having fallen behind, Apple --
04:50:44 25 Panasonic, Samsung, and LG -- LG in the technology race,

04:50:48 1 they also fell behind in the commercial race. They didn't
04:50:52 2 have a 4G phone, and they had to make a decision.

04:50:54 3 You will hear from Mr. Tony Blevins, who's the
04:50:58 4 senior executive at Apple, and at his deposition, he
04:51:01 5 testified under oath that when Apple made the decision to
04:51:04 6 launch 4G, it did not investigate whether it was using the
04:51:08 7 patents of others. It just made the decision because it
04:51:12 8 had to. It had to have 4G so that it could sustain its
04:51:20 9 market. It had to have it.

04:51:23 10 This is what the record will also show, that in
04:51:25 11 January of 2007, PanOptis requested that Apple take a
04:51:31 12 license to its patents. It is over three years later.
04:51:40 13 Apple has chosen to not take a license to the same patents
04:51:44 14 that other members of the industry have.

04:51:45 15 We actually were able to look in Apple's records,
04:51:52 16 and Apple testified under oath that they use something
04:51:54 17 called an Innography database, and in that database that
04:52:00 18 Apple pays for, that Apple uses, that Apple witnesses
04:52:04 19 admitted they accessed to check on PanOptis, there are
04:52:07 20 strength scores for the importance of our patents.

04:52:11 21 This is one of the strength scores, a 90 to 100
04:52:14 22 percentile. This is the database that Apple's lawyers use.
04:52:22 23 This is what the scores of our patent are. And, in fact,
04:52:25 24 all the scores are in the top 25 percent of all the
04:52:29 25 patents, and there's millions of them that are listed in

04:52:32 1 the database. These are what is in Apple's internal
04:52:36 2 records, which we found.

04:52:37 3 As to infringement, on which we bear the burden by
04:52:40 4 a preponderance of the evidence, so if one pebble is on our
04:52:45 5 side, we prevail. We're going to present two types of
04:52:48 6 analysis.

04:52:49 7 First, we're going to present an analysis that
04:52:51 8 PanOptis's patents are essential to practice the LTE
04:52:54 9 specifications, the standard. We're going to compare the
04:52:58 10 patents to the standard, the actual standard documents.

04:53:01 11 The second thing we're going to do is we're going
04:53:03 12 to do a detailed source code analysis in which we look at
04:53:05 13 the actual code that is used to implement Apple's LTE. And
04:53:09 14 we're going to talk to you about experiments, field
04:53:12 15 experiments that were performed under the control of our
04:53:15 16 experts to see how Apple device works.

04:53:17 17 An interesting fact, which is it wasn't just that
04:53:24 18 Kyocera, ZTE, BlackBerry, and Huawei, all of whom sell LTE
04:53:29 19 devices, took a license to our patents, we actually
04:53:32 20 presented to them claim charts on four of the five
04:53:35 21 patents-in-suit. We showed them in claim charts why these
04:53:39 22 patents are essential to the LTE standard. And each of
04:53:43 23 them took a license to the patents.

04:53:44 24 As to the source code analysis, we've asked two
04:53:52 25 independent experts, Professor Mahon and Professor

04:53:57 1 Madisetti, to speak about their analysis.

04:54:00 2 Each of them has deep experience with cellular
04:54:02 3 technology. Each of them performed an independent
04:54:05 4 analysis. They spent hundreds and hundreds of hours on
04:54:09 5 this analysis. They've looked through hundreds of
04:54:12 6 thousands of lines of code. They ran experiments. They
04:54:14 7 worked with a team to run simulations, all to analyze, all
04:54:19 8 to conclude that these patents were infringed by Apple.

04:54:21 9 In addition to infringement, we also bear the
04:54:29 10 burden on damages.

04:54:32 11 Now, what's interesting about damages is that I
04:54:37 12 believe Apple's going to tell you that LTE is just one of
04:54:43 13 thousands or tens of thousands of features that are used in
04:54:46 14 its phone. It couldn't possibly be worth that much money.

04:54:52 15 Well, if LTE wasn't so important, why did they
04:54:55 16 start using it in 2012 without asking permission? And if
04:54:59 17 LTE wasn't so important, why did they charge hundreds of
04:55:04 18 dollars for their devices in order for you to be able to
04:55:07 19 use it on a cellular network?

04:55:09 20 The reality is, is that cellular technology is a
04:55:13 21 crucial part of Apple's profitability and of its products.

04:55:17 22 In fact, we've done analysis, and solely from the
04:55:23 23 initiation of this lawsuit in February of 2019, solely from
04:55:32 24 the initiation of this lawsuit, Apple has generated close
04:55:34 25 to \$900 million --

04:55:35 1 THE COURT: Fifteen minutes remaining, counsel.

04:55:36 2 MR. SHEASBY: -- in profits from using this
04:55:40 3 technology, \$900 million in profits from using this
04:55:43 4 technology. I think it becomes quite apparent why there's
04:55:47 5 a lawsuit in a federal court.

04:55:49 6 Apple has actually a number of excuses for why it
04:55:57 7 shouldn't have to pay. Apple's lawyer said, I want to make
04:55:57 8 one thing clear, we don't infringe. Well, that is one of
04:56:01 9 their arguments, but they have lots more.

04:56:03 10 So one of Apple's arguments is, we didn't know
04:56:06 11 about these patents. We're shocked that you're accusing us
04:56:10 12 of infringing the patents.

04:56:12 13 But, once again, we were able to look under the
04:56:15 14 hood. This is an internal Apple document prepared by their
04:56:18 15 lawyers from 2014 in which they acknowledge that they do
04:56:23 16 not have a license to 50 percent of the LTE patents.
04:56:29 17 That's what the document says. This is an internal
04:56:32 18 document. This is an internal document prepared by Apple
04:56:37 19 lawyers that we were able to access because of this
04:56:39 20 lawsuit.

04:56:39 21 Their second excuse is, oh, your patents aren't
04:56:43 22 essential. Oh, they're not really essential for the
04:56:46 23 standard. So, to be clear, LG, Panasonic, and Samsung, who
04:56:50 24 participated in the creation of those standards, LG,
04:56:53 25 Panasonic, and Samsung patents, which are licensed by

04:56:56 1 essentially every other major LTE phone manufacturer in the
04:57:00 2 United States, LTE patents in which -- which were
04:57:04 3 specifically shown claim charts or analyses to these
04:57:08 4 licensees as to why they're standard and were paid money
04:57:12 5 for, in this courtroom this week Apple is going to tell you
04:57:15 6 they're not essential.

04:57:17 7 But we can actually show that they are essential.
04:57:22 8 So this is the patent claim on the left. This is the LTE
04:57:27 9 specification on the right. And you'll see that the LTE
04:57:31 10 specification, the LTE standard is verbatim, verbatim what
04:57:37 11 is present in the patent.

04:57:41 12 And so this is a significant example of the
04:57:43 13 evidence we'll be able to present, and we'll walk through
04:57:48 14 for many of the patents showing that the patents match up
04:57:52 15 exactly to the standard.

04:57:54 16 To be clear, Apple is going to take the position
04:57:57 17 that this patent, the '332 -- the '332 patent, is not
04:58:01 18 essential to the standard, even though the standard uses
04:58:05 19 verbatim what is in the patent.

04:58:07 20 That's what's going to happen this week from the
04:58:11 21 Defendants.

04:58:12 22 The next argument that Defendants make is they
04:58:17 23 say, oh, well, we do it differently from your patents.
04:58:21 24 Even if they are essential, we do it differently.

04:58:26 25 Well, that's an odd argument because if the

04:58:28 1 patents are essential and they do it differently, that
04:58:31 2 would mean that they're not practicing LTE.

04:58:34 3 We actually were able to examine one of their
04:58:37 4 experts in this case. His name is Friedholm Rodermund. To
04:58:41 5 give you some context, Friedholm Rodermund was a senior
04:58:44 6 member of ETSI. Remember, Judge Gilstrap talked about ETSI
04:58:49 7 in his instructions? ETSI is part of the group that
04:58:54 8 created the LTE standard. In fact, he is the only Apple
04:58:59 9 expert that participated in the meetings to construct the
04:59:04 10 LTE standard.

04:59:05 11 And what did he say? He says that Apple's iPhone
04:59:11 12 practices the LTE standard. He admitted it under oath.
04:59:14 13 And yet Apple is going to suggest, and they did in previous
04:59:17 14 argument, that they do it differently, that there's some
04:59:21 15 different form of LTE.

04:59:22 16 Their next argument is that the patents -- well, I
04:59:29 17 actually want to stop there.

04:59:30 18 If Apple had a different or special way of doing
04:59:37 19 it, don't you think that's something they would advertise?
04:59:43 20 Don't you think that's something they would tout? We don't
04:59:46 21 use LTE, we use Apple's special secret form of LTE. They
04:59:52 22 don't do that. They just use LTE.

04:59:54 23 Now, what's interesting is that they referred to
04:59:57 24 two chip manufacturers who they get pieces of their
05:00:02 25 equipment from. They referred to Qualcomm and Intel. They

05:00:05 1 make pieces that are used in LTE.

05:00:08 2 You will not hear one word from a Qualcomm witness
05:00:12 3 disputing that its chips implement the patents-in-suit in
05:00:16 4 this case. Not one word.

05:00:19 5 Now, the flip side is, you are going to hear words
05:00:22 6 from Apple engineers who used to work at Intel who are
05:00:28 7 going to tell you that Apple does something different, that
05:00:32 8 Apple doesn't infringe the patents.

05:00:35 9 But there's something very important about that
05:00:39 10 testimony. Those Apple witnesses were shown the
05:00:42 11 patents-in-suit by Apple lawyers over a year after the
05:00:48 12 patents -- this lawsuit was filed. They were prepared by
05:00:51 13 Apple lawyers, they were prepared to toe the company line.

05:00:55 14 No independent chip manufacturer is going to come
05:00:59 15 to this court and dispute that PanOptis's patents are
05:01:03 16 essential. The only thing you're going to hear from is
05:01:06 17 people who are prepared to toe the party line by Apple's
05:01:09 18 lawyers.

05:01:10 19 The next issue is that the patents are invalid.

05:01:16 20 Now, our patents have a presumption of validity.
05:01:20 21 They are presumed valid. Because they are presumed valid,
05:01:24 22 it's a very, very high burden to establish that the patents
05:01:28 23 are invalid.

05:01:29 24 You must do it by clear and convincing evidence.
05:01:33 25 One of the factors you can consider when you analyze

05:01:36 1 validity is what other members of the industry have done.
05:01:40 2 Other members of the industry have taken a license to these
05:01:43 3 patents after them being specifically presented to
05:01:47 4 PanOptis.

05:01:48 5 Apple's last argument is, okay, so even if we did
05:01:53 6 know about it, even if we do infringe it, even if it is
05:01:56 7 essential, it's not worth that much.

05:02:00 8 In fact, they have someone who's going to get on
05:02:02 9 the stand and say we only need to pay PanOptis about
05:02:05 10 one-tenth of a cent for the 24 percent improvement benefit
05:02:09 11 that they achieved from using the technology.

05:02:12 12 \$8.79 per phone is what Apple saves or makes by
05:02:20 13 using our technology. Apple is asking for one-tenth of a
05:02:27 14 cent.

05:02:27 15 The reality is, is that this litigation is part of
05:02:37 16 an internal strategy at Apple. This is a document that was
05:02:41 17 prepared by Apple's lawyers. This is PX-1537a. This was a
05:02:51 18 document that was prepared behind closed doors. It was a
05:02:54 19 document that was prepared right before, or a few years
05:02:57 20 before, PanOptis approached Apple and asked them to take a
05:03:00 21 license.

05:03:01 22 And what Apple says in this internal document is
05:03:04 23 that they want to devalue SEPs. They want to devalue
05:03:10 24 standard essential patents. They want to destroy LTE
05:03:13 25 innovation. Why do they want to do it? Money. Because if

05:03:17 1 they can destroy the patents of others, then they don't
05:03:20 2 have to pay fair -- fair compensation for them.

05:03:23 3 This is Apple's internal documents stating that
05:03:28 4 its goal is to destroy SEP values.

05:03:32 5 Let's look under the hood this week. Look
05:03:37 6 carefully under the hood. Don't trust my argument. Trust
05:03:41 7 what the documents say, what Apple's internal documents
05:03:45 8 say.

05:03:45 9 This is another element of Apple's strategy. This
05:03:53 10 is, once again, from an internal Apple document. Apple
05:03:59 11 talks about a range of approaches, and one of the
05:04:02 12 approaches it likes to use is called license as
05:04:06 13 adjudicated. This is the plans of Apple's lawyers.

05:04:09 14 And why do they want to say license as
05:04:11 15 adjudicated? Well, that's a funny word for, let someone
05:04:15 16 sue us.

05:04:16 17 Now, why in the world would you want to wait for
05:04:20 18 someone to sue you for patent infringement? Well, we
05:04:22 19 actually know the answer to that, because it's in their
05:04:25 20 internal documents.

05:04:26 21 The reason for it is because they want to delay
05:04:30 22 payments. They want to avoid having paid the money for as
05:04:35 23 long as possible.

05:04:39 24 One of the things that Judge Gilstrap said is that
05:04:42 25 we are advocates, and there is no doubt that I am a strong

05:04:47 1 advocate for PanOptis. There's also no doubt that the
05:04:53 2 documents written by Apple behind closed doors do not lie.
05:04:58 3 And this is what the documents show.

05:05:01 4 And what's striking about it is they're willing to
05:05:06 5 accept the litigation burden, the burden of being here.
05:05:11 6 They're willing to accept the fact that they can face
05:05:14 7 significant, extraordinary damages in this case. And the
05:05:17 8 reason for that is because it's part of a strategy, a
05:05:20 9 strategy to delay for as long as possible, doing what?
05:05:26 10 Taking responsibility. Taking responsibility for their
05:05:31 11 actions.

05:05:31 12 And so what you see in these pieces of evidence,
05:05:38 13 and what I think you'll see at trial, is a company that has
05:05:42 14 consciously chosen to make extraordinary profits, that
05:05:47 15 failed to make a critical decision early in the 2000s to
05:05:53 16 invest heavily in LTE, that recklessly chose to implement
05:05:58 17 LTE technology without even thinking about whether they had
05:06:03 18 the right to on their own, a company that is going to get
05:06:07 19 on the stand and say, we didn't know about your patents,
05:06:11 20 when we sent them a letter in writing in 2017 saying, we
05:06:15 21 have a group of standard essential patents we want to
05:06:18 22 discuss licensing with you.

05:06:20 23 They say, we didn't know about it. And then when
05:06:22 24 we looked in their internal records, what do we find? We
05:06:27 25 find a database that has scores of 90 to 100 percent for

05:06:31 1 our patents.

05:06:34 2 We look in their internal records after we
05:06:36 3 approached them and asked them to take a license. What
05:06:40 4 does it show? It shows that their plan is to destroy our
05:06:45 5 business, to destroy the value of standard essential
05:06:49 6 patents to save money.

05:06:50 7 What does the internal records show? The internal
05:06:53 8 records show that this is part of a broader plan -- a
05:06:57 9 broader plan to delay making payments.

05:07:00 10 All these arguments about looking under the hood,
05:07:03 11 all these arguments about we're going to show you a
05:07:09 12 mountain of evidence, all these arguments about just give
05:07:12 13 us a chance, just wait until we have to say, you can't run
05:07:15 14 away from the documents. You can't run away from the plan
05:07:20 15 that they've been implementing since 2014.

05:07:24 16 THE COURT: Three minutes remaining.

05:07:25 17 MR. SHEASBY: And so, ultimately, you have to ask
05:07:31 18 a very important question. You are sacrificing a week of
05:07:37 19 your lives to be here. Why? Why? It's because it's your
05:07:48 20 right. It's your right to make a decision as to whether
05:07:51 21 Apple's conduct is appropriate or inappropriate, as to
05:07:55 22 whether Apple has the right to take without compensating
05:07:59 23 and to implement an internal strategy to destroy the
05:08:02 24 intellectual property of others.

05:08:03 25 Apple makes great products. Apple made an

05:08:06 1 incredibly bad decision when it chose not to invest in LTE,
05:08:12 2 and it made an incredibly bad decision when it did not
05:08:15 3 accept PanOptis's offer of license. And today is when the
05:08:20 4 consequences begin.

05:08:21 5 Ladies and gentlemen of the jury, thank you for
05:08:23 6 your time.

05:08:26 7 THE COURT: All right. The Defendant may now
05:08:28 8 present its opening statement.

05:08:31 9 Would you like a warning on your time,
05:08:34 10 Mr. Mueller?

05:08:35 11 MR. MUELLER: Yes, please, Your Honor. 10 minutes
05:08:37 12 and three minutes, please.

05:08:39 13 THE COURT: 10 minutes remaining and three minutes
05:08:40 14 remaining.

05:08:41 15 MR. MUELLER: Thank you, Your Honor.

05:08:41 16 THE COURT: You may proceed.

05:08:43 17 MR. MUELLER: Good morning [sic]. My name is Joe
05:08:49 18 Mueller, and along with my colleagues, I represent Apple in
05:08:52 19 this case. And we had a chance to hear a little bit about
05:08:55 20 each of you earlier today, so I'll tell you a little bit
05:08:58 21 about myself.

05:08:59 22 Mr. Baxter mentioned that I'm from Massachusetts,
05:09:01 23 and that's -- that's absolutely true. I live in a small
05:09:04 24 town of about 7,000 people where I grew up. My wife is
05:09:09 25 from the next town over. And when we got married, we moved

05:09:14 1 to a few different places, and she was a public school
05:09:17 2 teacher and taught sixth grade.

05:09:20 3 And then eventually once we started having kids,
05:09:26 4 she decided to stay at home with them, and we moved back to
05:09:30 5 my hometown. We both had family nearby, and we figured it
05:09:33 6 would be a good place to raise kids.

05:09:35 7 Today we have three kids. My oldest is going to
05:09:39 8 be a senior in high school, and he's trying his best to
05:09:42 9 figure out what he's going to do after he graduates next
05:09:44 10 year.

05:09:45 11 My middle child is going to be a sophomore in high
05:09:48 12 school. This summer he's playing a lot of baseball on an
05:09:52 13 AAU team, and he's hoping his high school football team
05:09:56 14 will be playing this fall. He plays wide receiver and
05:10:01 15 linebacker on the football team.

05:10:03 16 And my youngest is my daughter. She's going into
05:10:03 17 seventh grade, and she has all sorts of hobbies and
05:10:07 18 interests and a very strong personality. She really sort
05:10:09 19 of lays down the law for her brothers. They're all back
05:10:13 20 home.

05:10:13 21 But I'm very glad to be here with you for the rest
05:10:17 22 of this week, and if we carry into next week, for that, as
05:10:20 23 well. And I'm glad to be here with you because it's a real
05:10:23 24 privilege to be able to present evidence and the facts to a
05:10:28 25 fair-minded group of people like yourself. And we really

05:10:32 1 appreciate the time that you're taking out of your lives to
05:10:35 2 do this.

05:10:37 3 This is indeed an extraordinary time, and it's
05:10:39 4 a -- a difficult time, and we very much appreciate your
05:10:43 5 careful attention to the facts and to the evidence.

05:10:46 6 So I thank you. Apple thanks you for being here.

05:10:50 7 Now, let me introduce you to the other folks who
05:10:52 8 are going to be examining witnesses for our side over the
05:10:57 9 course of the case.

05:10:58 10 Melissa Smith you met earlier. And she'll be
05:11:02 11 examining some of the witnesses in the case.

05:11:05 12 And the third lawyer you're going to see is
05:11:07 13 Michael Summersgill, who is right there.

05:11:09 14 The three of us over the course of this week will
05:11:12 15 be examining the witnesses that you're going to hear from.

05:11:16 16 When the Plaintiff offers witnesses, we'll be
05:11:19 17 doing some cross-examination. And with our own folks,
05:11:22 18 we'll be doing direct examination of those witnesses.

05:11:24 19 Now, there's a fourth person at this table here
05:11:28 20 who I want to introduce you to.

05:11:30 21 And, Mr. Blevins, could you please stand up?

05:11:33 22 This is Tony Blevins. He's from Apple. He is the
05:11:36 23 vice president of procurement at Apple, and he's worked
05:11:42 24 there for 20 years. He's been there since 2000.

05:11:47 25 Mr. Blevins's job at Apple is to help, as the --

05:11:49 1 the job title suggests, procure components that go into all
05:11:54 2 of the different Apple products, the iPhone, the iPad,
05:11:59 3 everything else. And he's responsible for finding things
05:12:01 4 that range from the glass on the front of the phone to the
05:12:04 5 chips on the inside, and a whole bunch of other stuff, as
05:12:07 6 well.

05:12:10 7 He is here on behalf of the company to be the
05:12:12 8 company's representative. He's going to be sitting right
05:12:14 9 here every day of the trial, and he's going to testify to
05:12:18 10 you, the ladies and gentlemen of the jury.

05:12:21 11 You may please sit down, Mr. Blevins.

05:12:24 12 Now, the reason why he's here is because Apple
05:12:27 13 considers this an important case.

05:12:29 14 Now, you heard His Honor say it's an important
05:12:32 15 case. You heard Mr. Sheasby say it's an important case.
05:12:34 16 They're right. They're right. It is an important case.
05:12:37 17 But the reason why it's an important case to Apple is
05:12:40 18 because they've been wrongfully accused -- wrongfully
05:12:46 19 accused.

05:12:46 20 Now, if one of you were accused of doing something
05:12:49 21 that you didn't do and doing -- and accused of doing some
05:12:53 22 quite horrible things, as you just heard from Mr. Sheasby,
05:12:56 23 but you didn't do them, you'd be upset. And you'd consider
05:13:02 24 that an important case to defend your name and to clear
05:13:06 25 your name. And that's why we're here.

05:13:09 1 It's an important case to Apple because what you
05:13:11 2 just heard for a half-hour is not supported by the
05:13:15 3 evidence. We're going to show you the evidence in a very
05:13:18 4 careful way over the course of this week. You're going to
05:13:22 5 hear from Apple witnesses. You're going to see Apple
05:13:25 6 document after Apple document after Apple document.

05:13:28 7 You're going to see other documents, as well, that
05:13:31 8 relate to the particular components at issue. We want you
05:13:35 9 to have all the facts, confidential, public, everything in
05:13:40 10 between.

05:13:41 11 There may be some moments where we have to ask His
05:13:44 12 Honor to seal the courtroom because the information is so
05:13:46 13 sensitive, but you will have it. You will have it.

05:13:49 14 We're not running from a single fact in this case.
05:13:54 15 We want you to have the facts. We want you to hear
05:13:58 16 firsthand from folks at Apple, not just Mr. Blevins.
05:14:02 17 You're going to hear from chip engineers who work on the
05:14:05 18 engineers -- who work on the chips at issue in this case.

05:14:09 19 Now, if we had something to hide, do you think we
05:14:12 20 would bring the engineers to you? The answer is no. We
05:14:16 21 have absolutely nothing to hide. We want you to know how
05:14:19 22 these products work. We want you to know how they work in
05:14:23 23 great detail because we are confident -- we are confident
05:14:27 24 that when you have all the facts, when you have the
05:14:29 25 evidence in front of you, you will understand that the

05:14:35 1 accusations you just heard are not true. They're not true.

05:14:38 2 And that's why this is an important case to us.

05:14:41 3 Now, the theory that you just heard, or a big part
05:14:46 4 of the theory that you just heard, is that the five patents
05:14:50 5 in this case cover something known as LTE and that Apple is
05:14:57 6 infringing those patents by having products that work on
05:15:00 7 LTE networks.

05:15:04 8 So I want to take a couple of minutes and examine
05:15:07 9 that claim and preview for you what I think the evidence
05:15:10 10 will show.

05:15:10 11 So, first of all, what is LTE? Now, His Honor
05:15:14 12 told you that LTE is an example of what's known as a
05:15:17 13 standard. And, of course, that's a hundred percent true.
05:15:20 14 Standards are in all parts of life. There's food safety
05:15:25 15 standards. There's standards for gas mileage in cars.
05:15:28 16 There's standards for electrical plugs. There's all sorts
05:15:31 17 of standards.

05:15:32 18 And for cellular devices like cell phones and
05:15:37 19 cellular products like cellular iPads, there are indeed
05:15:41 20 cellular standards, and there's actually several. There's
05:15:45 21 something called GSM, GPRS, EDGE, UMTS, LTE. And you don't
05:15:54 22 have to remember all these names right now, but we're going
05:15:56 23 to explain them over the course of this trial. There's a
05:15:59 24 number of different types of cellular standards, and LTE is
05:16:03 25 certainly one of them.

05:16:04 1 Now, for products that are capable of cellular
05:16:08 2 communications, these days, most all of them are able to
05:16:10 3 work on LTE networks.

05:16:12 4 I just brought as an example a phone from -- that
05:16:17 5 I picked up at Walmart. And you can see here it's a 4G/LTE
05:16:21 6 phone. So if you want to use this to call on a 4G/LTE
05:16:26 7 network, you can do that. It works. It works on a 4G/LTE
05:16:30 8 network.

05:16:31 9 And you heard from Mr. Sheasby that there's been
05:16:33 10 testimony about whether Apple complies or practices or
05:16:36 11 implements, or whatever word you want to use, LTE. And I
05:16:41 12 want to make one thing really clear right now. Of course,
05:16:45 13 Apple's products work on an LTE network. That's not in
05:16:49 14 dispute in this case. It is absolutely not in dispute in
05:16:53 15 this case.

05:16:53 16 This phone that I picked up at Walmart also works
05:16:55 17 on LTE networks, and most phones these days do. The fact
05:16:59 18 that Apple's products work on an LTE network is not in
05:17:03 19 dispute.

05:17:04 20 Here is what is in dispute: Are the five patents
05:17:10 21 that the Plaintiffs in this case bought from Samsung, LG,
05:17:18 22 and Panasonic used in the Apple products? That's the real
05:17:23 23 issue. Are these five patents used in the Apple products?
05:17:32 24 They don't own LTE. They don't own the basic idea of LTE.
05:17:36 25 What they own are five patents that they're asserting in

05:17:39 1 this case, and the claim they're making is that the Apple
05:17:42 2 products infringe those five patents.

05:17:47 3 So that's the question we have to look into over
05:17:49 4 the course of the trial. Are they right? So how do we
05:17:53 5 figure out the answer to that question? We take the five
05:17:57 6 patents, we look at them -- and I'm going to show you one
05:18:00 7 in just a few minutes -- and we carefully and methodically
05:18:07 8 compare those five patents to the Apple products in this
05:18:11 9 case.

05:18:11 10 So we have on the one hand the patents, on the
05:18:12 11 other hand the products. We know what they both are. And
05:18:13 12 we see if they match. If they match, there's infringement.

05:18:18 13 But what you're going to see, what the evidence
05:18:21 14 will show is that for each of these five patents, there's
05:18:25 15 important differences between how these products work and
05:18:29 16 the patents. There is no infringement, and there never was
05:18:34 17 for any one of these five patents.

05:18:36 18 And the fact that they support LTE is not the
05:18:40 19 question. If that were right, I could just hold up this
05:18:47 20 phone and say, oh, 4G/LTE, it must use these five patents.
05:18:53 21 That's not how it works. What you would need to do for
05:18:54 22 this phone -- you're not going to have to do this because
05:18:55 23 it's not at issue in this case, but just to illustrate the
05:18:59 24 point, this is 4G/LTE.

05:19:02 25 I'd have to open the box, take it out. Not just

05:19:05 1 that. I'd have to unscrew the components, look at the
05:19:09 2 computer code running inside the components, get into the
05:19:12 3 guts of the device to see if it's using these patents.

05:19:18 4 Exactly the same thing is true for the iPhone, and
05:19:20 5 you're going to have the opportunity to learn exactly how
05:19:23 6 these devices work in the guts, in the guts of the device.

05:19:28 7 And you're going to have to consider if you look
05:19:31 8 in the guts of the device, do these products match the five
05:19:38 9 patents in this case? That's the question. And you will
05:19:41 10 see, the evidence will show, there is no match for any of
05:19:45 11 the five patents.

05:19:45 12 Now, a few times Mr. Sheasby referred to the
05:19:50 13 patents being declared essential. And I want to pause on
05:19:53 14 that for a minute because it's an important point that I
05:19:57 15 want to ensure there's no confusion on.

05:20:00 16 The European Telecommunications Standards
05:20:02 17 Institute that His Honor told you about does not check
05:20:06 18 patents one-by-one and say this is essential. This is not.
05:20:10 19 This is essential. This is not. It doesn't work that way.

05:20:15 20 The way ETSI works is, it lets companies declare
05:20:20 21 patents as possibly essential to ETSI, and then it goes
05:20:24 22 into a big database where it records thousands upon
05:20:27 23 thousands of patents that various companies in the industry
05:20:31 24 have declared essential.

05:20:33 25 Now, does the fact that these patents, the five in

05:20:37 1 this case and many others, were declared essential mean
05:20:42 2 they're actually essential or even more used in an iPhone?
05:20:47 3 And the answer is no. It's just a declaration.

05:20:50 4 I could declare myself an NFL quarterback. I wish
05:20:57 5 it were true. It's not. Okay. I'm not an NFL
05:21:00 6 quarterback. I could declare myself eligible for the NBA
05:21:04 7 draft. I'm not going to get drafted, okay? I could
05:21:08 8 declare myself ready to be a guitarist in a major rock
05:21:14 9 band. I should not get ready to go on tour because no band
05:21:18 10 is going to be calling me anytime soon, okay?

05:21:21 11 So you get the point. The point is, just
05:21:23 12 declaring something, doesn't make it so. You have to have
05:21:27 13 the evidence and the facts to back up your declaration.

05:21:30 14 So the fact that the Plaintiffs and Samsung and
05:21:33 15 Panasonic and LG had declared these five patents to be
05:21:37 16 essential doesn't mean anything more than they had declared
05:21:42 17 this as possibly essential. It certainly doesn't mean it's
05:21:49 18 used in the iPhone.

05:21:51 19 The only way to know that is to, as Ms. Smith
05:21:55 20 said, pop the hood on the device, get into the internals,
05:21:59 21 understand how they work, and compare them carefully and
05:22:03 22 methodically to the patents in this case. That's the only
05:22:07 23 way to do it.

05:22:08 24 You can't just say something. You got to back it
05:22:10 25 up with proof. You can't just make accusations. You got

05:22:14 1 to back it up with evidence. You can't just say someone is
05:22:17 2 trying to destroy things and engage in some grand
05:22:21 3 conspiracy. You have to prove your point, the actual
05:22:26 4 evidence, and present it to jurors. That's what we're
05:22:30 5 going to do this week.

05:22:31 6 We, Apple, are going to present you the facts.
05:22:34 7 We're not going to make wild accusations. We're going to
05:22:38 8 show you the facts piece-by-piece-by-piece because we trust
05:22:43 9 your judgment. We know that if you have the evidence,
05:22:46 10 you'll do the right thing.

05:22:53 11 Now, what is the component if you pop the hood
05:22:55 12 that really matters for this particular case? Because
05:22:58 13 there's a whole bunch of components inside the iPhone.
05:23:01 14 What is the component that really matters? It's something
05:23:08 15 called a baseband chip. And I'm holding this right now in
05:23:11 16 a little case. It's hard to see.

05:23:14 17 Your Honor, may I use the document camera?

05:23:20 18 THE COURT: You may.

05:23:21 19 MR. MUELLER: So I don't know if you can see it.
05:23:21 20 I'll try to magnify it just a little bit, kind of hard to
05:23:21 21 make out.

05:23:22 22 That's a computer chip right there. And it's, you
05:23:30 23 know, smaller than my fingernail, but it's a very powerful
05:23:36 24 computer chip. And a baseband chip is a special kind of
05:23:40 25 chip that's used for cellular communications. So if you're

05:23:42 1 talking on your phone, what happens is your voice goes into
05:23:46 2 a microphone, the microphone is connected to tiny wires
05:23:49 3 inside the phone, and, eventually, that signal gets sent to
05:23:54 4 the baseband chip.

05:23:55 5 The baseband chip does certain things to the
05:23:57 6 signal to get it ready to transmit over the air waves using
05:24:04 7 an antenna, and then it gets transmitted over the air waves
05:24:10 8 to an antenna.

05:24:10 9 Where those signals go, they go to something
05:24:13 10 called base stations. And base stations are those big
05:24:18 11 antennas that you see on the side of the highway or other
05:24:21 12 places.

05:24:21 13 So the phone, through the baseband chip, gets the
05:24:24 14 signal ready to transmit. It is transmitted over the
05:24:24 15 airway to a base station, and then it's retransmitted to
05:24:28 16 whoever you're talking to, for example.

05:24:30 17 And the same sort of process works if you're using
05:24:33 18 a cellular network to send a text message or use the
05:24:36 19 Internet. You're going to be accessing the baseband chip
05:24:39 20 at some point to get ready to transmit or receive
05:24:45 21 information.

05:24:45 22 Now, since Apple released the iPhone in 2007, 13
05:24:52 23 years ago, they have used two main suppliers of baseband
05:24:57 24 chips. One is a company in California, in San Diego,
05:25:03 25 called Qualcomm. And the second is a company also in

05:25:07 1 California called Intel.

05:25:07 2 Those two companies, Qualcomm or Intel, supplied
05:25:12 3 all of the baseband chips in the products at issue in this
05:25:16 4 case. So some of the Apple iPhones in this case have Intel
05:25:16 5 chips, some have Qualcomm chips.

05:25:21 6 The same is true for the iPads and the Apple
05:25:23 7 Watches in this case. But every one of them has one or the
05:25:26 8 other, some form of baseband chip inside those devices.

05:25:29 9 Now, every phone in the world has a baseband chip.
05:25:33 10 This phone I picked up at Walmart also has a baseband chip
05:25:37 11 in it. But here's the key, not every baseband chip is the
05:25:41 12 same. Not every baseband chip is the same. They -- they
05:25:46 13 share certain characteristics in common, but there's
05:25:50 14 differences.

05:25:51 15 Now, why is that true? Because there's teams of
05:25:57 16 hundreds, if not thousands, of engineers who work on these
05:25:57 17 chips. They may look small, but a whole bunch of work goes
05:26:01 18 into those; years and years of development. And the folks
05:26:05 19 at Intel and Qualcomm over the years made certain design
05:26:09 20 choices that are reflected in the baseband chips that they
05:26:11 21 create.

05:26:12 22 So you'd -- you can't tell just by looking at the
05:26:16 23 outside of a package, even if it says LTE, how the chip
05:26:20 24 works. You got to look at the chip itself. You have to
05:26:24 25 look at the details of the source code, which is the

05:26:27 1 computer code running on that chip, to make sure you
05:26:32 2 understand exactly how the chip works.

05:26:33 3 So, again, to return to the critical question in
05:26:37 4 this case, it's not whether the Apple products work on an
05:26:40 5 LTE network. Of course, they do. Of course, they do.

05:26:42 6 The question is, how -- how do those baseband
05:26:48 7 chips inside of the Apple products work? And, in
05:26:51 8 particular, the portions of those chips that PanOptis and
05:26:54 9 its other four companies, the five Plaintiffs in this case,
05:26:58 10 the ones that they say infringe, do they really match the
05:27:01 11 patents or not? That's the question. We have to get
05:27:04 12 inside the guts of these phones, look at them very
05:27:06 13 carefully, and compare them to the patents in this case to
05:27:10 14 see if they match.

05:27:12 15 Now, I mentioned that you're going to hear from
05:27:19 16 some actual engineers who work on baseband chips, and let
05:27:21 17 me explain why that's possible.

05:27:23 18 Last year, Apple and Intel struck a deal, and
05:27:25 19 under the terms of that deal, a large number, hundreds and
05:27:28 20 hundreds, if not thousands, of engineers joined Apple.
05:27:32 21 They came from Intel to Apple. And they are some of the
05:27:35 22 folks that work on baseband chips. Two of those folks are
05:27:39 23 going to be testifying to you, the ladies and gentlemen of
05:27:41 24 the jury.

05:27:41 25 So you're going to get a chance to hear from

05:27:45 1 people who have actually worked on baseband chips. You're
05:27:48 2 going to get a chance to hear firsthand the types of work
05:27:51 3 that they do when they're making design choices and how
05:27:55 4 that's reflected in how the products actually work.

05:27:57 5 And, again, we want you to have that information
05:27:59 6 because we're not afraid of the facts. We want you to have
05:28:02 7 the facts. We're bringing fact witnesses to you because we
05:28:06 8 believe the facts are on our side. And when you have those
05:28:10 9 facts, you'll see the accusations you heard are just not
05:28:15 10 true.

05:28:15 11 Now, the baseband chips are going to have to be
05:28:21 12 compared to something and, in particular, they're going to
05:28:24 13 have to be compared to the five patents in this case. And
05:28:27 14 what I want to do right now is to show you how to read
05:28:32 15 these patents. This will build on what you saw this
05:28:35 16 morning in the patent video and what His Honor has told you
05:28:40 17 in his instructions.

05:28:41 18 So you each have a notebook, and I'm going to ask
05:28:43 19 you, if you could, to please turn to the section that's
05:28:47 20 labeled U.S. Patent 8,385,284.

05:28:50 21 THE COURT: You have 10 minutes remaining,
05:28:53 22 counsel.

05:28:53 23 MR. MUELLER: Thank you, Your Honor.

05:28:54 24 So take your time, and if you could just flip to
05:28:59 25 the section for the '284 patent. We usually refer to

05:29:05 1 patents by the last three numbers. So this one we call the
05:29:09 2 '284 patent.

05:29:09 3 Now, if you open this up and you turn past the
05:29:12 4 title page, you're going to see a page that kind of looks
05:29:15 5 like this, and there's a lot of information on it. I
05:29:18 6 apologize, my pen exploded here, but there's a lot of
05:29:22 7 information here about the inventors, the date it was
05:29:26 8 originally filed, the title, there's something called an
05:29:29 9 abstract. There's a whole bunch of information in this
05:29:32 10 section.

05:29:32 11
05:29:35 12 Then if you keep going, you will see some figures
05:29:37 13 and drawings. And if you go a bit further in, you will see
05:29:43 14 a section where there's numbers at the top of the page, and
05:29:48 15 it starts with 1 and 2. We call those the column numbers.

05:29:53 16 And then if you look right down the middle in the
05:29:55 17 center of the page, there's some additional numbers. We
05:29:58 18 call those the line numbers. So we have column numbers and
05:30:03 19 line numbers.

05:30:04 20 Now, if I could please ask each of you, if you
05:30:09 21 wouldn't mind, to turn to Column 28, Line 43, and take your
05:30:25 22 time. But Column 28, Line 43. And you will see there a
05:30:39 23 section that starts off with the words, the invention
05:30:42 24 claimed is, the invention claimed is, and what continues
05:30:46 25 from there are the language of the claims.

05:30:46 1
05:30:48 2 Now, only some of the claims in this patent and
05:30:51 3 the other patents in this case are at issue, meaning
05:30:53 4 they're only asserting some of them. But for the ones that
05:30:56 5 they're asserting, you have to look at every word. If any
05:31:00 6 one of those words is missing in what they're accusing of
05:31:03 7 infringement, there is no infringement.

05:31:06 8 So the reason why I'm asking you to look at this
05:31:09 9 now is because we want you -- we on the Apple side of the
05:31:12 10 table here, we want you to look at the words in the claims
05:31:16 11 and to do so carefully. We want you to methodically
05:31:22 12 compare those words to the products, because if you do
05:31:26 13 that -- and that's what His Honor will instruct you is
05:31:30 14 required to decide the issues before you, you're going to
05:31:33 15 find they don't match.

05:31:34 16 And I'll give you one example. If you go to the
05:31:37 17 next page, Column 29, at the very top there, Line 3,
05:31:43 18 there's a phrase: Wherein the first subset of the values
05:31:47 19 contains more values than the second subset of the values.
05:31:52 20 So that's one of the requirements for this particular
05:31:55 21 claim. This is Claim 1. And if you don't have that, you
05:32:00 22 don't infringe Claim 1.

05:32:02 23 Well, you're going to learn in this case that the
05:32:04 24 Apple products don't have that. That requires a comparison
05:32:08 25 in which one set of information is bigger than the other.

05:32:11 1 You're going to find out that the Apple products is exactly
05:32:13 2 the opposite of what is described right here. So there's
05:32:17 3 no infringement of that claim.

05:32:19 4 You will learn, and the evidence will show, that
05:32:23 5 for each of the five patents in this case, there's at least
05:32:28 6 one requirement missing from the Apple products, sometimes
05:32:33 7 more than one, but at least one requirement missing if you
05:32:37 8 compare the claim language to the Apple products.

05:32:40 9 And so that's why we want you to be careful and
05:32:43 10 methodical and thorough and to consider the evidence,
05:32:46 11 because we believe that if you do that, you will see the
05:32:50 12 case just doesn't hold together. There's missing
05:32:55 13 requirements in each and every one of these patents if you
05:33:00 14 compare them to the products.

05:33:01 15 Now, I want to give you two analogies to try to
05:33:06 16 help illustrate what I think is one of the main disputes in
05:33:10 17 this case.

05:33:11 18 The Plaintiffs say Apple has products that work on
05:33:15 19 LTE networks. They must be using our essential patents.
05:33:20 20 Again, they've just declared them as essential. They have
05:33:23 21 to prove their case.

05:33:25 22 But there's a couple of analogies that I think
05:33:27 23 help illustrate the fight that's going to here. The first
05:33:30 24 one is this. Sometimes you're going someplace by car, and
05:33:34 25 there's multiple possible routes to get there. So you're

05:33:38 1 going to arrive at a destination, but there's multiple
05:33:42 2 possible routes to get there. And you might prefer one
05:33:45 3 route if there's traffic on the other or a car accident, or
05:33:48 4 you might have a preference for driving down a scenic road
05:33:53 5 at a certain point in time. But there's multiple possible
05:33:57 6 ways to get there.

05:33:58 7 If you arrive there, it doesn't mean you
05:34:00 8 necessarily took any one route. You took whatever you
05:34:04 9 chose to do.

05:34:04 10 The Plaintiffs' claims in this case boil down to
05:34:07 11 the argument that they own a stretch of road somewhere, and
05:34:11 12 they say you have to travel through it to get to LTE.
05:34:16 13 Well, it's just not true. If you look at these five
05:34:19 14 patents and compare them to the products, which is what you
05:34:21 15 have to do, you're going to see we're not using their road.
05:34:25 16 We're also not cutting down their trees or stealing their
05:34:30 17 guns or anything else that Mr. Baxter mentioned in voir
05:34:34 18 dire. Those are powerful analogies that talk about clear
05:34:34 19 cutting property that doesn't belong to you.

05:34:34 20 We haven't done anything like that, not once, not
05:34:37 21 ever. There's been no infringement of these patents at
05:34:39 22 all.

05:34:39 23 And whether it's characterized as cutting down
05:34:43 24 trees or anything else, it just didn't happen, okay?

05:34:48 25 And I'd also say this. The property analogies you

05:34:51 1 have to keep in mind are the ones that are defined by the
05:34:54 2 claims that we just walked through. Those set the
05:35:01 3 boundaries on land for patents. Those claims and those
05:35:06 4 requirements in the claims are the equivalent of a fence
05:35:09 5 line around a property, and you don't get to move your
05:35:11 6 fence line, and you don't get to move your patent lines.
05:35:14 7 You have to live with and be true to and faithful to what
05:35:18 8 the Patent Office issued.

05:35:20 9 And we're going to show you the arguments in this
05:35:23 10 case the Plaintiffs are making are -- are trying to stretch
05:35:26 11 out their lines, to move their fence line into other folks'
05:35:31 12 property that they don't own, and that's just not right.
05:35:33 13 You can't do that with patents.

05:35:35 14 The requirements in the claims, like the ones that
05:35:38 15 we just showed you, in the other four patents, as well,
05:35:42 16 those are the fence line. You can't move the fence line,
05:35:45 17 and we're not within their fence line. In fact, we're not
05:35:48 18 even close to their fence line.

05:35:50 19 THE COURT: Three minutes remaining.

05:35:52 20 MR. MUELLER: Thank you, Your Honor.

05:35:52 21 The second analogy I want to give you is, say I'm
05:35:58 22 driving a car on the highway.

05:36:00 23 Now, right now for this week, I've rented a Dodge
05:36:05 24 Ram. And say I'm on the highway, and I press on the
05:36:07 25 accelerator, and I get to 65, and say there are some other

05:36:10 1 cars nearby that are traveling at about the same speed.

05:36:14 2 Does the fact that we're traveling 65 miles an hour, other
05:36:18 3 vehicles, mean that we have the same engine? No.

05:36:21 4 The Dodge Ram has a different engine than a small
05:36:26 5 sports car. An 18-wheeler has a different engine than a
05:36:30 6 Dodge Ram, and so on. If you wanted to know what we were
05:36:32 7 doing, you wouldn't just look at the 65 miles an hour,
05:36:35 8 you'd look at the engine. You'd get a good mechanic, you'd
05:36:40 9 pop the hood, you'd figure out how that engine works.

05:36:41 10 And that's what you have to do here. And that's
05:36:43 11 why Ms. Smith talked about popping the hood. You got to go
05:36:46 12 inside these devices to see how they actually work. You
05:36:49 13 can't make loose accusations. You got to prove it by going
05:36:55 14 inside these devices to show how they work.

05:36:57 15 That's why we're bringing you engineers, and we're
05:36:59 16 also going to bring you three extraordinarily experienced
05:37:03 17 technical experts who are going to help explain what
05:37:05 18 happens inside these devices.

05:37:06 19 Now, Mr. Sheasby showed you something that had all
05:37:09 20 these different excuses and sign posts and so on. Let me
05:37:13 21 be very, very clear. We're not here to make excuses.
05:37:16 22 We're here to tell you the truth. We're here to give you
05:37:19 23 the facts, and we're here to show you we do not use these
05:37:23 24 five patents, and we never did.

05:37:25 25 Now, I want to say a few words about the

05:37:27 1 invalidity issues in this case. We are not going to
05:37:30 2 present any argument to you at this trial that the Patent
05:37:34 3 Office made a mistake. Not one.

05:37:38 4 What we are going to do in this trial is to look
05:37:42 5 at the way that the Plaintiffs are trying to apply these
05:37:46 6 patents and to see if -- if you stretch them in the way
05:37:50 7 they're trying to stretch them to get to the Apple products
05:37:52 8 what the consequences would be for validity, because it
05:37:56 9 turns out that if you stretch the patents in the way that
05:37:59 10 they're trying to do it, you would sweep in the old ideas
05:38:02 11 of other folks, as well.

05:38:03 12 We're also going to show you that some important
05:38:07 13 information was not in front of the Patent Office for at
05:38:09 14 least one of the patents in this case. None of that is a
05:38:13 15 criticism of the Patent Office at all.

05:38:15 16 What we would like you to do is to examine the
05:38:17 17 full context and to hold the Plaintiffs, these five
05:38:22 18 companies, faithful to what the claims actually say. We
05:38:25 19 think that if you do that, you will see there's no
05:38:27 20 infringement.

05:38:28 21 Now, a few final things. The Plaintiffs, these
05:38:32 22 are five companies. We'll learn more about them over the
05:38:37 23 course of this case. But here's who they're not. They're
05:38:40 24 not Samsung. They're not Panasonic. They're not LG.
05:38:43 25 Samsung is not in this case. LG is not in this case.

05:38:47 1 Panasonic is not in this case.

05:38:49 2 The Plaintiffs are the Plaintiffs. They're five
05:38:53 3 companies that we'll learn more about, but they are not
05:38:56 4 Samsung, Panasonic, and LG.

05:38:59 5 THE COURT: Counsel, your time has expired.

05:39:01 6 MR. MUELLER: Thank you, Your Honor.

05:39:01 7 THE COURT: Take just a few seconds and finish up.

05:39:04 8 MR. MUELLER: Sure.

05:39:04 9 The final thing is this. The truth, which we will
05:39:07 10 try to establish over the course of this case, is that
05:39:09 11 Apple has never used these five patents, not once, not
05:39:14 12 ever.

05:39:14 13 And at the end of the case, I will return to you
05:39:16 14 and respectfully request a verdict in favor of Apple.

05:39:20 15 Thank you very much.

05:39:21 16 THE COURT: All right. Ladies and gentlemen of
05:39:25 17 the jury, you've now heard opening statements from both of
05:39:28 18 the competing parties.

05:39:31 19 I'm about to recess for the evening. We'll begin
05:39:34 20 in the morning with the Plaintiffs' first witness to begin
05:39:37 21 the Plaintiffs' case-in-chief.

05:39:39 22 Let me remind you of what I said earlier. Unless
05:39:44 23 you live alone, when you get home, whoever meets you there
05:39:48 24 is going to ask -- the first question out of their mouth is
05:39:51 25 going to be, tell me what happened in federal court today.

05:39:54 1 Just don't even try to answer that question.
05:39:57 2 Blame it on me. Tell them I made it very clear that until
05:40:02 3 I release you from your duty as jurors, you are not to
05:40:05 4 discuss the case with anyone, and that means communicate
05:40:07 5 about it in any way.

05:40:08 6 Please follow all the other instructions I've
05:40:12 7 given you. Please be back assembled in the jury room
05:40:15 8 between 8:15 and 8:30 so we can start as close to 8:30 in
05:40:22 9 the morning as possible.

05:40:24 10 Please take your notebooks and leave them in the
05:40:25 11 jury room. You probably want to leave those face shields
05:40:29 12 on top of your respective notebooks so you can keep them
05:40:33 13 straight.

05:40:34 14 Have a good evening, ladies and gentlemen. You're
05:40:39 15 excused.

05:40:40 16 COURT SECURITY OFFICER: All rise.

05:40:41 17 (Jury out.)

05:40:42 18 THE COURT: Be seated, please.

05:41:08 19 Counsel, does either party wish to invoke the
05:41:14 20 Rule?

05:41:15 21 MR. SHEASBY: Plaintiffs wish to invoke the Rule,
05:41:18 22 Your Honor, as to fact witnesses only.

05:41:20 23 THE COURT: All right. The Rule has been invoked
05:41:23 24 as to fact witnesses only. That means unless you are a
05:41:26 25 party representative or an expert witness in this case, if

05:41:30 1 you're going to testify as a fact witness only, you must
05:41:34 2 remain outside of the courtroom until you're called to
05:41:37 3 testify.

05:41:38 4 Counsel, the Rule has been invoked on that basis.
05:41:41 5 I will trust that you will police it with your respective
05:41:44 6 fact witnesses going forward starting in the morning.

05:41:46 7 We'll begin in the morning with Plaintiffs' first
05:41:50 8 witness now that we've completed opening statements.

05:41:52 9 Also, I remind you to follow the instructions I've
05:41:57 10 given you with regard to any overnight disputes that might
05:42:01 11 develop, to strenuously and candidly meet and confer in an
05:42:05 12 attempt to resolve if not substantially narrow those.

05:42:08 13 I need a report in the manner I've described it to
05:42:11 14 you by 10:00 o'clock this evening by email to my law
05:42:16 15 clerks. I will look for a follow-up notebook by 7:00
05:42:19 16 o'clock in the morning showing what's been resolved and
05:42:21 17 what remains in dispute.

05:42:23 18 Please follow the format that I discussed with you
05:42:28 19 earlier today about an example of what is in dispute, the
05:42:31 20 objecting party's basis for that objection, and the
05:42:35 21 responding party's basis to respond to those objections
05:42:39 22 segregated between each respective dispute.

05:42:41 23 A collective narrative with an entire slide deck
05:42:45 24 is of no help to the Court.

05:42:48 25 Please adjust your practice accordingly.

05:42:50 1 I will be in chambers no later than 7:30 to meet
05:42:55 2 with you, if necessary, to take up any such disputes. And
05:42:58 3 I will do all within my power so that we can start as close
05:43:04 4 to 8:30 in the morning as possible.

05:43:05 5 Is there anything else that Plaintiff or Defendant
05:43:08 6 is aware of that needs to be raised with the Court before
05:43:11 7 we recess for the evening?

05:43:12 8 MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

05:43:15 9 MR. MUELLER: No for Defendants, Your Honor.

05:43:18 10 Thank you.

05:43:18 11 THE COURT: All right. We stand in recess until
05:43:23 12 tomorrow morning.

05:43:25 13 COURT SECURITY OFFICER: All rise.

05:43:28 14 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/2020

8/3/2020
Date